

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
COMMONWEALTH EDISON COMPANY )  
 ) No. 11-0721  
Tariffs and charges submitted ) (Rehearing)  
pursuant to Section 16-108.5 )  
of the Public Utilities Act. )

Chicago, Illinois  
August 3, 2012

Met, pursuant to adjournment at 9:00a.m.

BEFORE:

Ms. Claudia Sainsot and Mr. Douglass E.  
Kimbrel, Administrative Law Judges

APPEARANCES:

EXELON BUSINESS SERVICES, by  
MR. RICHARD BERNET  
10 South Dearborn Street, Suite 4900  
Chicago, IL 60603  
(312) 394-3623

- and -

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(312) 447-2800

- and -

EIMER STAHL, LLP  
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for Commonwealth Edison Company;

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7 for ICC Staff witnesses;  
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9 MS. SUSAN L. SATTER and MS. KAREN L. LUSSON  
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11 Chicago, IL 60601  
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13 for the People of the State of Illinois;  
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- and -  
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L.A. COURT REPORTERS, by

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1 JUDGE SAINOT: Okay. By the authority vested  
2 in me by the Illinois Commerce Commission I now  
3 call Docket No. 11-0721. It is the matter of the  
4 Commonwealth Edison Company, and it is Tariffs and  
5 Charges Submitted Pursuant to Section 16-108.5 of  
6 the Public Utilities Act, and we are here on  
7 rehearing.

8 Would the parties identify themselves  
9 for the record, please?

10 MR. BERNET: On behalf of Commonwealth Edison  
11 Company, Richard Bernet; 10 South Dearborn, Suite  
12 4900, Chicago, 60603, (312) 394-3623.

13 MR. JOHNSON: Also on behalf of Commonwealth  
14 Edison Company, Mark R. Johnson; Eimer Stahl, LLP,  
15 224 South Michigan Avenue, Suite 100, Chicago,  
16 Illinois, 60604.

17 MR. RIPPPIE: And on behalf of Commonwealth  
18 Edison Company, Glenn -- two N's, R-I -- double P  
19 as in Peter -- I-E with Rooney, Rippie &  
20 Ratnaswamy, R-A-T-N-A-S-W-A-M-Y, LLP, 350 West  
21 Hubbard Street, Suite 600, Chicago, 60654.

22 MS. SATTER: Appearing on behalf of the People

1 of the State of Illinois, Susan L. Satter and Karen  
2 L. Lusson, 100 West Randolph, Chicago, Illinois,  
3 60601.

4 MS. SODERNA: Appearing on the behalf of the  
5 Citizens Utility Board, Julie Soderna and Christie  
6 Hicks, 309 West Washington, Suite 800, Chicago,  
7 Illinois, 60606.

8 MS. CARDONI: Appearing on the behalf of Staff  
9 witnesses for the Illinois Commerce Commission,  
10 Jessica Cardoni, John Sagone and John Feeley. We  
11 are at 160 North LaSalle, Suite C-800, Chicago,  
12 Illinois, 60601.

13 MR. REDDICK: For the Illinois Industrial  
14 Energy Consumers, IIEC, Conrad Reddick, 1015 Crest  
15 Street, Wheaton, Illinois, 60189.

16 Eric Robertson of Lueders, Robertson &  
17 Konzen, 1939 Delmar Avenue, Granite City, Illinois,  
18 62040.

19 JUDGE SAINSOT: Is that it? Okay. I just  
20 have a few things before we get started. Nobody  
21 asked us if we had any questions of the witnesses  
22 with the exception of Mr. Pregozen. So please

1     don't do that again. And we have a new court  
2     reporting service. Please speak forcefully and  
3     distinct for her, and lawyers please identify  
4     yourselves every time. Okay. This is just a  
5     reminder that the rules of evidence do apply here.  
6     Okay. Let's get started.

7             MR. JOHNSON: Okay. Mark Johnson on behalf of  
8     Commonwealth Edison Company, and we first call Mr.  
9     Joseph Trpik.

10            JUDGE SAINSOT: Let's swear him in.

11                           (Whereupon, the witness was duly  
12                           sworn.)

13                   JOSEPH R. TRPIK, JR.,  
14     having been first duly sworn, was examined and  
15     testified as follows:

16                           DIRECT EXAMINATION

17     BY MR. JOHNSON:

18             Q.     Good morning, Mr. Trpik. Could you  
19     please state and spell your full name for the  
20     record?

21             A.     Joseph R. Trpik, Jr. Trpik is,  
22     T-R-P-I-K. My title is senior vice president,



1 treasurer and chief financial officer of  
2 Commonwealth Edison.

3 JUDGE KIMBREL: Mr. Trpik, I don't think your  
4 microphone is on.

5 THE WITNESS: Sorry.

6 BY MR. JOHNSON:

7 Q. And by whom are you employed?

8 A. Commonwealth Edison Company.

9 Q. Thank you. Now, I've provided you with  
10 two documents there, both of which include  
11 attachments, and are these documents that you  
12 previously designated as your direct and rebuttal  
13 testimony on rehearing?

14 A. Yes, they are.

15 Q. And let's first turn to your direct  
16 testimony on rehearing, which is designated as  
17 ComEd Exhibit 31.0. It constitutes eight pages of  
18 narrative testimony and also Exhibit 31.1; is that  
19 correct?

20 A. Yes, it is.

21 Q. And together these exhibits constitute  
22 your direct testimony on rehearing, correct?

1           A.     Yes.

2           Q.     And Mr. Trpik, did you prepare or cause  
3     to be prepared under your direct supervision and  
4     control ComEd Exhibit 31.0?

5           A.     Yes, I did.

6           Q.     And are there any additions or  
7     corrections that you need to make to 31.0?

8           A.     No, there are not.

9           Q.     And if I were to ask you the same  
10    questions as appear in Exhibit 31.0 today, would  
11    you give these same answers?

12          A.     Yes, I would.

13          Q.     Next, let's turn to your rebuttal  
14    testimony on rehearing, which is marked as ComEd  
15    Exhibit 36.0. And it includes 16 pages of  
16    narrative testimony and Exhibit 36.1. Together  
17    these exhibits constitute your rebuttal testimony  
18    on rehearing; is that correct?

19          A.     That's correct.

20          Q.     And did you prepare or cause to be  
21    prepared under your direction or direct supervision  
22    and control ComEd Exhibit 36.0?

1           A.     Yes, I did.

2           Q.     And are there any additions or  
3     corrections that you need to make to 36.0?

4           A.     No.

5           Q.     If I were to ask you the same questions  
6     as appear in ComEd Exhibit 36.0 today, would you  
7     give these same answers?

8           A.     Yes, I would.

9           Q.     Your Honor, I hereby move for admission  
10    into evidence of ComEd Exhibits 31.0, 31.1, 36.0  
11    and 36.1.

12           JUDGE SAINSOT:   Any objections?

13                   Hearing none, your motion is granted.

14                           (Whereupon, ComEd Exhibit Nos. 31.0,  
15                           31.1, 36.0 and 36.1 were admitted  
16                           into evidence.)

17           MR. JOHNSON:   Thank you.   And with that, Mr.  
18    Trpik is available for cross-examination.

19           JUDGE SAINSOT:   And you are going to tender  
20    three copies to us?

21           MR. JOHNSON:   Yes.

22                           CROSS-EXAMINATION

1 BY MS. SATTER:

2 Q. Good morning, Mr. Trpik. I'm Susan  
3 Satter on behalf of the People of the State of  
4 Illinois. I have just a few questions for you.

5 First, I would like you to turn to your  
6 rebuttal testimony, Page 4, and the statements  
7 beginning at the Line 80. You say, In other words,  
8 although the investment reflected in the  
9 reconciliation balance is part of -- and I am going  
10 to delete some words that were extraneous -- is  
11 part of the same nature as the investment that is  
12 earning ComEd's WACC, and then you continue.

13 When you say W -- well, first let me ask  
14 you. When you refer to the investment reflected in  
15 the reconciliation balance, is that the regulatory  
16 asset that represents the reconciliation balance?

17 A. Yes, it is.

18 Q. Okay. So that's just a longer way of  
19 saying regulatory asset?

20 A. That specific regulatory asset, yes.

21 Q. Thank you. And when you say WACC, you  
22 mean weighted average cost of capital, correct?

1           A.     Yes.

2           Q.     And the debt -- and what is that made up  
3 of? Let's start there.

4           A.     The weighted average cost of capital  
5 represents -- the actual weighted average cost is  
6 of common --

7           THE COURT REPORTER: Excuse me. Can you speak  
8 up? It's hard to hear you.

9           JUDGE SAINSOT: The court reporter is having  
10 trouble hearing you.

11          THE WITNESS: The weighted average cost of  
12 capital represents ComEd's actual -- the cost that  
13 ComEd has of actually raising capital. In ComEd's  
14 case it's broken down into three parts; the cost of  
15 equity, the cost of long-term debt and the cost of  
16 short-term debt.

17          BY MS. SATTER:

18          Q.     Okay. And the cost of these components  
19 -- the costs of these components are determined at  
20 a specific point in time; isn't that correct?

21          A.     Yes.

22          Q.     And the -- the return on equity portion

1 of the capital cost is based on costs reflected by  
2 the Federal Reserve for a particular year; is that  
3 right?

4 A. Well, it is based on defining the  
5 formula rate.

6 Q. Okay. And that refers back to a report  
7 issued by the Federal Reserve?

8 A. It is a 30 -- the average 30-year  
9 Treasury rate per year plus 580 basis points.

10 Q. Thank you. So would you agree that  
11 ComEd calculates its weighted average cost of  
12 capital under formula ratemaking by looking at  
13 historical data rather than projected future  
14 financing?

15 A. The calculation is based on actual costs  
16 of ComEd.

17 Q. And when the -- when the amount is set,  
18 does it incorporate historical costs?

19 MR. JOHNSON: Could you just clarify which  
20 amount is being set?

21 BY MS. SATTER:

22 Q. The weighted average cost of capital.

1           A.     It represents the actual costs for the  
2     year of the reconciliation.

3           Q.     Okay. And the -- ComEd's weighted  
4     average cost of capital includes its weighted cost  
5     of long-term debt, correct?

6           A.     It does as a component.

7           Q.     Okay. And you would agree with me that  
8     the weighted average cost of debt is reflected in  
9     ComEd's formula tariff, correct?

10          A.     It is as a component of the WACC, yes.

11          Q.     What I would like to do is refer you to  
12     a document in the record already. It's ComEd  
13     Exhibit 22.1, Appendix 13, and I can provide that  
14     to you for convenience.

15                 Now, you would agree with me that  
16     Appendix 13 includes a listing of the embedded cost  
17     of long-term debt for Commonwealth Edison?

18          A.     Yes.

19          Q.     Okay. And would you agree with me that  
20     the weighted average cost of capital includes the  
21     historically issued first mortgage bonds shown on  
22     Lines 1 through 20 of this exhibit?

1           A.     Yes. It includes our outstanding  
2     current debt.

3           Q.     And for example, is it correct that  
4     starting at Line No. 1, Series 92 was issued  
5     April 15th, 1993?

6           A.     That's correct.

7           Q.     Okay. And matures April 15th, 2013?

8           A.     Yes, it does.

9           Q.     And if we go down this list, can we see  
10    the date that these various first mortgage bonds  
11    were issued?

12          A.     Yes, you can.

13          Q.     And the interest rate that was incurred  
14    at -- for each of these bonds is listed in Column  
15    C, right?

16          A.     Column C represents the interest rate we  
17    are currently paying on this loan.

18          Q.     And they vary. If we look at Line 19  
19    being a series issued August 20th, 2010, you have a  
20    4 percent interest rate; is that correct?

21          A.     That's correct.

22          Q.     And if we go back to the first line we



1     have a 7.625 interest rate, right?

2             A.     That's correct.

3             Q.     Now, you would agree with me, of course,  
4     that with regard to any reconciliation balance that  
5     may exist in the future under formula ratemaking,  
6     ComEd can't go back in time and issue any more of  
7     the historical bonds that are listed here?

8             A.     That is correct.

9             Q.     And the amount outstanding for these  
10    existing bonds and the interest being paid on these  
11    existing bonds are fixed, correct?

12            A.     That's correct.

13            Q.     And isn't it true that if Commonwealth  
14    Edison needs to issue new debt to finance formula  
15    ratemaking reconciliation balances that new debt  
16    would be issued at today's market interest rates,  
17    correct?

18            A.     That is correct.

19            Q.     And again, looking at the same section  
20    of your testimony I referred you to earlier, Page  
21    4, the paragraph beginning at Line 78, would you  
22    agree that the investment that is earning ComEd

1 WACC consists of assets that are included in the  
2 rate base and have already been financed?

3 A. Yes.

4 Q. And would you also agree that  
5 Commonwealth Edison's future investment is larger  
6 than its historical rate base; the future higher  
7 investment will require incremental new capital  
8 above and beyond the first mortgage bonds that  
9 ComEd has in its historic -- or in its existing  
10 portfolio of finances?

11 A. That is a possibility.

12 Q. And it's also possible that it would  
13 finance incremental capital needs through  
14 internally-generated funds?

15 A. That's correct.

16 Q. Now, I just have a brief question for  
17 you on your direct. That would be your ComEd  
18 Exhibit -- I believe it's 31 at Line 127 on Page 6  
19 you say, "The impact is great enough such that it  
20 would not be a viable financial strategy for ComEd  
21 to proceed with the EIMA investments."

22 And my question to you is, does

1 Commonwealth Edison intend to remain a  
2 participating utility under EIMA?

3 A. ComEd currently intends to remain a  
4 participating utility.

5 Q. And so long as Commonwealth Edison  
6 remains a participating utility, ComEd believes it  
7 has the ability to fulfill its investment  
8 obligations under the law; is that correct?

9 A. ComEd will continue to fulfill its  
10 obligations as long as it is a participating  
11 utility.

12 MS. SATTER: I have no further questions.  
13 Thank you.

14 CROSS-EXAMINATION

15 BY MS. SODERNA:

16 Q. Good morning, Mr. Trpik. My name is  
17 Julie Soderna, and I represent Citizens Utility  
18 Board.

19 Mr. Trpik, you discuss in your direct  
20 and rebuttal testimony on rehearing the appropriate  
21 interest rate to apply to the reconciliation  
22 balance; is that right?

1           A.     Yes, I do.

2           Q.     Okay. And CUB issued a data request,  
3 CUB 6.01, to the company regarding this issue, and  
4 you were listed as sponsoring witness. Do you  
5 recall CUB 6.01?

6           A.     I do not. Can you provide it to me?

7           Q.     Sure.

8           MS. SODERNA: This is CUB Data Request 6.01,  
9 and the company's response, which CUB is marking  
10 for identification as CUB Cross Exhibit No. 1 on  
11 Rehearing.

12                         (Whereupon, CUB Cross Exhibit No. 1  
13                         on Rehearing was marked for  
14                         identification.)

15 BY MS. SODERNA:

16           Q.     Do you recall reviewing this request and  
17 preparing the response?

18           A.     I do.

19           Q.     And this request asks a series of  
20 questions about a Duke Energy financing option  
21 called Duke Energy PremierNotes; is that right?

22           A.     It does.

1           Q.     And in developing a response to this  
2 request, did you review the attachments to the  
3 request, which included the ad in the August 2012  
4 Journal of Accountancy and the homepage for Duke  
5 Energy PremierNotes?

6           A.     I did.

7           Q.     Am I correct that Duke Energy  
8 PremierNotes involved obtaining funds directly from  
9 investors?

10          A.     They do.

11          Q.     Would you agree with me that Duke Energy  
12 PremierNotes are an additional source of financing  
13 to Duke Energy beyond Duke Energy's commercial  
14 paper borrowings and line of credit borrowings?

15          A.     I do agree. They are a different source  
16 of financing.

17          Q.     And the interest cost of the Duke Energy  
18 PremierNotes is about 1.5 percent; is that correct?

19          A.     It is.

20          Q.     Is it your understanding that interest  
21 cost is tax deductible?

22          A.     It is in most cases.

1           Q.     In response to CUB 6.01C you state that  
2     ComEd does not classify the Duke Energy  
3     PremierNotes as low cost relative to ComEd's  
4     current short-term borrowing plan; is that right?

5           A.     That is correct.

6           Q.     And then referring to Attachment 1 to  
7     your response, does ComEd have sufficient  
8     short-term finance formulas -- does ComEd have  
9     sufficient short-term financing to finance formula  
10    rate plan under-collections that might arise in a  
11    given year such as 2011?

12          A.     ComEd has a capital structure which  
13    includes short-term debt at a level which we  
14    believe is accurate to operate our business.

15          Q.     Do you know what is the maximum amount  
16    of borrowing ComEd can undertake in 2012, for  
17    example, from each source listed in Attachment 1 to  
18    the response to CUB 6.01, which is commercial  
19    paper, line of credit borrowings and one to  
20    two-year bank loans?

21          A.     I can respond to my estimate in some  
22    cases. They are not exact amounts.

1           Q.       That would be fine. Give your best  
2 estimate, if you would, please.

3           A.       Our commercial papers are -- our best  
4 estimate is that we could raise somewhere around  
5 \$400 million. That is a by-product of the  
6 commercial paper market at our current credit  
7 rating. Our line of credit -- we have an  
8 outstanding line of credit facility, \$1 billion  
9 currently for ComEd. As it relates to intercompany  
10 loans, we do not borrow from any of our related  
11 companies at -- any companies related to ComEd  
12 within the Exelon Company. And as it relates to  
13 bank loans, that is solely a by-product of the  
14 market, and cost really isn't determinable other  
15 than the one to two-year loan. It is driven by the  
16 cost of obtaining that.

17           JUDGE SAINSOT: Mr. Trpik, I'm having trouble  
18 hearing you, and I'm, what, two feet away from you?

19           THE WITNESS: Would you like me to start  
20 again?

21           JUDGE SAINSOT: That's all right.

22           BY MS. SODERNA:

1           Q.     If ComEd could finance the entire amount  
2     of formula rate plan under-collected reconciliation  
3     balance with the short-term borrowing options  
4     listed in Attachment 1 to the response to CUB 6.01,  
5     would the effective financing cost to ComEd be  
6     below the 1.5 percent rate listed for the Duke  
7     Energy PremierNotes?

8           A.     That is possible, but ComEd does not  
9     finance individual transactions. ComEd finances  
10    based on the company's overall needs.

11          Q.     Would you consider Duke Energy a peer to  
12    ComEd?

13          A.     I would.

14          MS. SODERNA: Okay. I think that's all the  
15    questions I have.

16                 And I move for admission of CUB Cross  
17    Exhibit 1, please.

18          JUDGE SAINSOT: Any objections?

19          MR. JOHNSON: No objections.

20          JUDGE SAINSOT: Okay. CUB Cross Exhibit 1 is  
21    entered into evidence.

22



1 (Whereupon, CUB Cross Exhibit 1 was  
2 admitted into evidence.)

3 JUDGE SAINSOT: Does anybody else have  
4 questions?

5 MR. BERNET: AARP had questions, but I don't  
6 see anybody here.

7 JUDGE SAINSOT: Right. I don't see anybody  
8 here from AARP.

9 Any redirect?

10 MR. JOHNSON: Do your Honors have any  
11 questions for Mr. Trpik?

12 JUDGE SAINSOT: No, I don't.

13 JUDGE KIMBREL: No.

14 MR. JOHNSON: If we could just take a minute?

15 JUDGE SAINSOT: Sure.

16 (Whereupon, a short recess was  
17 taken.)

18 REDIRECT EXAMINATION

19 BY MR. JOHNSON:

20 Q. I think we have just a couple questions  
21 on redirect.

22 Mr. Trpik, in Ms. Satter's

1 cross-examination I think there was a question  
2 regarding how funds are generated in a  
3 particular -- with respect to the reconciliation  
4 balance, and I believe one of the sources that was  
5 identified were internally-generated funds, and I  
6 just wanted to ask you where those particular funds  
7 come from and how they are generated.

8 A. Sure. When I reference  
9 internally-generated funds, I am speaking of the  
10 return on equity or what would be the shareholder  
11 monies being reinvested into the company.

12 Q. Okay. Thanks. And the only other  
13 question I had was on the -- is it Cross Exhibit 1?

14 MS. SATTER: No. It's ComEd Exhibit 22.1.

15 BY MR. JOHNSON:

16 Q. All right. The 22.1 here. And Ms.  
17 Satter walked through the different bond line items  
18 here, 1 through 20, and I just wanted to ask why  
19 ComEd still carries debt at these older, higher  
20 rates when there is current, lower rates available  
21 as indicated as you go down this list.

22 A. Sure. As it relates to debt, generally

1 speaking, there are provisions in the debt. If you  
2 are to retire it early, there are penalties which  
3 are significant and in most cases greater than  
4 whatever interest savings would be if you were to  
5 replace that debt. It's a little different than,  
6 say, a mortgage that you can refinance when you  
7 want. At ComEd we constantly look at our debt  
8 structures to manage it as low as we can,  
9 considering those penalties, and we can even  
10 evaluate and manage our debt at the lowest possible  
11 structure that we can find as far as long-term  
12 debt.

13 MR. JOHNSON: Thank you. ComEd has nothing  
14 further.

15 RE-CROSS EXAMINATION

16 BY MS. SATTER:

17 Q. I do have one question actually about  
18 internally-generated funds. I think you said just  
19 a minute ago that you consider that shareholder  
20 money; is that correct?

21 A. Yes, I do.

22 Q. Okay. So are internally-generated

1 funds, funds that exceed the operating costs of the  
2 utility?

3 A. They can be, yes.

4 Q. Okay. So once they -- once your  
5 operating costs are covered, then you have  
6 additional funds to manage as a company; isn't that  
7 correct?

8 A. You do.

9 Q. And those additional funds are what we  
10 are referring to as internally-generated funds?

11 A. We are.

12 Q. Okay. Thank you.

13 JUDGE SAINSOT: Anything from ComEd?

14 FURTHER REDIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q. And one other point of clarification,  
17 Mr. Trpik. How do the internally-generated funds  
18 affect the capital structure?

19 A. Sure. The internally-generated funds,  
20 generally speaking, when you look at a capital  
21 structure, we evaluate the available cash as a body  
22 of -- as a company as a whole, and the

1 internally-generated funds when we are -- we are  
2 evaluating our capital structure, what is a prudent  
3 structure that is -- to have us be financially  
4 healthy, and those internally-generated funds,  
5 there are some that are short-term in nature. They  
6 are just excess that are used to manage the  
7 short-term debt, and the long-term -- you know, the  
8 long-term investment structure is really based on  
9 our capital needs and our cash available.

10 Q. Okay. But would they also be considered  
11 a source of retained earnings?

12 A. They are. When we generally speak to  
13 internally-generated funds when we are investing  
14 them, we are thinking of retained earnings.

15 MR. JOHNSON: Nothing further.

16 MS. SATTER: Nothing further.

17 JUDGE SAINSOT: Okay. You are excused, Mr.  
18 Trpik. Thank you.

19 The next witness is Mr. Pregozen, who is  
20 going to be testifying from Springfield, and just  
21 for the record, we are taking some witnesses out of  
22 order. This is a Staff witness as opposed to a

1 ComEd witness.

2 MR. PREGOZEN: Am I on?

3 JUDGE SAINSOT: Yes. We can hear you Mr.

4 Pregozen. Good morning.

5 MR. PREGOZEN: Good morning.

6 JUDGE SAINSOT: Why don't I swear you in while  
7 the ComEd lawyers get ready.

8 (Whereupon, the witness was duly  
9 sworn.)

10 JUDGE SAINSOT: Can you see me?

11 MR. PREGOZEN: Yes, I can.

12 ALAN SCOTT PREGOZEN,  
13 having been first duly sworn, was examined and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. CARDONI:

17 Q. Good morning, Mr. Pregozen. Would you  
18 please state your full name for the record and  
19 spell your last name?

20 And if you are talking, we can't hear  
21 you. No. We still can't.

22 JUDGE SAINSOT: And for the record, that was

1 Ms. Cardoni that was just speaking. Okay.

2 THE WITNESS: So I guess my microphone was  
3 off. How is that?

4 BY MS. CARDONI:

5 Q. Much better. Thank you.

6 A. Okay.

7 Q. Could you please state your full name  
8 and spell your last name?

9 A. My full name is Alan Scott Pregozen.  
10 The last name is spelled, P-R-E-G-O-Z-E-N.

11 Q. Who is your employer, and what is your  
12 business address?

13 A. My employer is the Illinois Commerce  
14 Commission. My business address is 527 East  
15 Capitol Avenue, Springfield Illinois, 62703 -- 01.  
16 Sorry.

17 Q. And what is your position at the  
18 Illinois Commerce Commission?

19 A. I am a manager in the finance  
20 department.

21 Q. Did you prepare a written exhibit for  
22 submittal in this proceeding?

1           A.     Yes, I did.

2           Q.     Do you have before you a document marked  
3     for identification as ICC Staff Exhibit 25.0  
4     consisting of 12 pages of narrative testimony,  
5     Schedule 25.1, and it's titled, the Direct  
6     Testimony on Rehearing of Alan Pregozen?

7           A.     Yes.

8           Q.     Did you prepare that document for  
9     presentation in this matter?

10          A.     Yes.

11          Q.     Do you have any corrections to make to  
12     Staff Exhibit 25.0?

13          A.     No.

14          Q.     Is the information contained in Staff  
15     Exhibit 25.0 true and correct, to the best of your  
16     knowledge?

17          A.     Yes.

18          Q.     If I were to ask the same questions as  
19     set forth in Staff Exhibit 25.0, would your  
20     responses be the same today?

21          A.     Yes.

22          MS. CARDONI: Your Honor, I move for admission



1     into evidence of ICC Staff Exhibit 25.0 and  
2     Schedule 25.1. I note for the record this document  
3     was filed on e-Docket on July 26th, 2012.

4             JUDGE SAINSOT: Any objections?

5             MR. RIPPIE: No objection, your Honor.

6             JUDGE SAINSOT: Okay. Hearing none, your  
7     motion is granted, Ms. Cardoni, and Staff  
8     Exhibits 25.0 and 25.1 are entered into evidence.

9                     (Whereupon, STAFF Exhibit No. 25.0  
10                    and Schedule 25.1 were admitted  
11                    into evidence.)

12            MS. CARDONI: Thank you. Mr. Pregozen is now  
13     available for cross.

14                    CROSS-EXAMINATION

15     BY MS. LUSSON:

16            Q.     Good morning, Mr. Pregozen.

17            A.     Good morning.

18            Q.     My name is Karen Lusson. I'm from the  
19     Attorney General's Office, and I just have a few  
20     questions for you. If you could turn your  
21     attention to Lines 39 through 50 of your testimony.

22            A.     Okay. I am there.

1           Q.     Okay. Beginning at Line 39 you  
2     reference that the prior assessment of staff was  
3     based on the mistaken understanding that the  
4     reconciliation adjustment operated similarly to a  
5     rider with the true-up mechanism, which is designed  
6     to recover the exact costs incurred, no more, no  
7     less. Do you see that?

8           A.     Yes.

9           Q.     Then you distinguish later on between  
10    the reconciliation adjustment and reference the  
11    risks associated with prudence and reasonableness.  
12    Do you see that there as well?

13          A.     Yes.

14          Q.     Would you agree that expenses recovered  
15    through a rider are subject to prudence and  
16    reasonableness assessments by the Commission?

17          A.     I believe that's typically the case.

18          Q.     And then later on in your testimony you  
19    indicate at Lines 47 through 50 that the  
20    reconciliation adjustment is combined with the  
21    revenue requirement, and it's also subject to the  
22    same degree of sales risk. Do you see that there?

1           A.     Yes.

2           Q.     Would you agree that actually under the  
3     statutorily allowed earnings collar, that ComEd is  
4     permitted to earn above the authorized return  
5     within the upper boundary of the collar listed in  
6     the statute?

7           A.     Yes, up to 50 basis points above it.

8           Q.     Could you turn to Line 143 of your  
9     testimony?

10          A.     I am there.

11          Q.     There you have a discussion about  
12     marginal cost of debt. Do you see that?

13          A.     Yes.

14          Q.     By marginal cost of debt, do you mean  
15     the cost of newly issued debt as contrasted against  
16     the company's currently issued and outstanding  
17     first mortgage bonds?

18          A.     Yes.

19          Q.     Would you agree that ComEd does not have  
20     any ability to go back in time and issue more of  
21     its bonds that were originally issued in the 1990's  
22     or early 2000's?

1           A.     Of course. Of course it can't.

2           Q.     Would you agree ComEd has not stated in  
3     this rehearing whether it needs to, or how it will  
4     finance if it does need to, any reconciliation  
5     balances that might be accrued?

6           A.     I don't believe it has.

7           Q.     Is it -- would you agree that if ComEd  
8     needs to finance new assets, it must either issue  
9     new debt, issue new equity or reinvest its retained  
10    earnings?

11          A.     Yes.

12          Q.     Now, it's not your belief, is it, that  
13    the Commission must identify how ComEd elects to  
14    actually finance specific new assets, if need be,  
15    such as a reconciliation balance, is it?

16          A.     You mean to set the interest rate? I'm  
17    not following the context of your question.

18          Q.     Well, yes. For purposes of determining  
19    what is an appropriate reconciliation interest  
20    rate, would you agree that it's not necessary for  
21    the Commission to specifically identify how ComEd  
22    will actually finance specific new assets, such as

1 the reconciliation balance, if need be?

2 A. No. I would just make one caveat in  
3 that whatever -- you wouldn't want the Commission  
4 to double comp interest. So if it sets a  
5 particular interest rate on the balance, you would  
6 want to make sure that you exclude it from the  
7 interest rate that's used in the embedded cost of  
8 debt, but other than that I would agree with your  
9 statement.

10 Q. Would you agree that it's appropriate  
11 for the Commission to determine a reasonable  
12 interest rate, but leave it up to ComEd management  
13 to decide how and when to marginally finance such  
14 investments?

15 A. I really don't know how to answer that  
16 question. It is my belief that the interest rate  
17 that is used should be based upon the cost of the  
18 capital components that ComEd could actually raise.  
19 So it should be strictly theoretical.

20 Q. Okay. If you know, would you agree that  
21 the company recorded a regulatory asset of  
22 approximately 29 million in 2011 to represent what

1     it thought at the time would be an underrecovery of  
2     its revenue requirement?

3           A.     That's my understanding, yes.

4           Q.     And would you agree that the recording  
5     of that regulatory asset net of applicable income  
6     taxes increased the company's income in 2011?

7           A.     That's my expectation, yes.

8           Q.     And to that extent, then the regulatory  
9     asset thus also increased the company's common  
10    equity?

11          A.     That's my understanding of how the  
12    accounting would work, yes.

13          MS. LUSSON:  Thank you, Mr. Pregozen.  No  
14    further questions.

15          JUDGE SAINSOT:  Any redirect from ComEd?

16          MR. RIPPIE:  It's actually cross, but --

17          JUDGE SAINSOT:  I'm sorry.  From Staff?

18          MR. RIPPIE:  Well, I actually have some  
19    cross-examination.

20          JUDGE SAINSOT:  Sure.  But I didn't want to --  
21    does Staff need to do it now?

22          MS. CARDONI:  ComEd can go.

1 CROSS-EXAMINATION

2 BY MR. RIPPKE:

3 Q. Good morning, Mr. Pregoren. It's been  
4 too many years.

5 A. It's been a while.

6 Q. I just have a couple of questions for  
7 you this morning, sir. ComEd's embedded cost of  
8 debt represents bonds and other debt instruments  
9 that have been issued in the past; is that correct?

10 A. Yes.

11 Q. To the extent that those instruments  
12 permit either additional funding or support a  
13 continuing quantity of capital, the terms and  
14 conditions specified in those instruments will  
15 continue to govern the company's cost of capital  
16 coming forward, will they not?

17 A. Yes.

18 Q. And is that the fundamental reason why  
19 the Commission in every rate case that I can  
20 remember utilizes the embedded cost of debt as the  
21 forward-looking debt capital cost component?

22 Let me amend that question. Is that a

1     reason why the Commission in virtually every rate  
2     case I can think of utilizes that cost as the debt  
3     cost component of the company's cost of capital for  
4     forward-looking ratemaking purposes?

5           A.     Well, yes. Let me describe it this way.  
6     The Commission sets up rate of return on a rate  
7     base, and that is designed to allow the company to  
8     recover its prudent and reasonable costs of the  
9     components of its capital, including the prudent  
10    and reasonable costs of its outstanding debt.

11          Q.     Fair enough. Now, without asking you  
12    the details of an indenture that's several feet  
13    thick, it is your understanding that mortgage bonds  
14    are secured by -- I hate to say it this way --  
15    security? They are secured debt, right?

16          A.     Right. They are secured by ComEd's  
17    property.

18          Q.     And that property is a floating  
19    definition, is it not? And by that I mean, as  
20    property is retired it's removed from the assets  
21    that are securing the bonds, and as new property is  
22    added it goes into that pool provided it falls



1     within the definition of the type of property  
2     covered?

3           A.     Yes.  It's my understanding that the  
4     indenture requires a minimum ratio of property to  
5     debt.

6           Q.     Are you aware of any circumstance in  
7     which Commonwealth Edison separately financed a  
8     particular individual investment that was within  
9     the definition of the mortgage bonds separately  
10    from, as Mr. Trpik testified, ComEd's overall  
11    operational capital needs?

12          A.     I'm just trying to digest the question  
13    here for a minute.  I am going to have to ask for  
14    you to repeat it, please.

15          Q.     Sure.  I will try to even make it  
16    clearer.  Were you here for Mr. Trpik's -- actually  
17    you weren't here.  Were you listening to Mr.  
18    Trpik's examination?

19          A.     I heard some, but not all of it.

20          Q.     Okay.  Well then, I won't make any  
21    presumption.  Are you aware of any circumstance in  
22    your nearly 20 years of experience in this looking

1 at the company where Commonwealth Edison has  
2 separately financed an asset or a group of assets  
3 that is of a type subject to its mortgage bonds  
4 separately from its financing of its general  
5 operational capital needs?

6 A. With the limitation that you've  
7 described of a type that's used to secure its  
8 mortgage bonds, I believe the answer is no.

9 Q. And was the one counterexample you are  
10 thinking of in certain environmental cost recovery  
11 issues?

12 A. No. I was thinking of the  
13 securitization that ComEd took in 1997.

14 Q. Then I will ask you a broader question.

15 With the exception of the statutory  
16 securitized bonds authorized and provided for as  
17 part of the restructuring legislation, are you  
18 aware of any instance where ComEd has separately  
19 financed an asset used in the provision of service  
20 apart from its financing of its general operational  
21 capital needs?

22 A. No.

1           Q.     My last question, Mr. Pregozen. You  
2     were asked a question about the company's  
3     recordation of a regulatory asset based on an  
4     estimate. Do you have any knowledge of how the  
5     company estimated the amount recorded or what the  
6     methodology was that the company used to estimate  
7     that amount?

8           A.     In a broad sense, I do. The specific  
9     details of that estimation, I do not.

10          Q.     Is it accurate to say in a broad sense  
11     your understanding was the company made the best  
12     estimate it could based upon or in the face of the  
13     uncertainty over what the Commission's ultimate  
14     reconciliation decisions would be?

15          A.     Yes.

16          Q.     And it is true, is it not, that  
17     depending upon what the Commission's ultimate  
18     reconciliation decisions are that number may need  
19     to be -- well, that number may not be exactly the  
20     number that turns out to be the reconciliation  
21     adjustment?

22          A.     Yes, that's correct.

1           MR. RIPPIE: That's everything I have. Thank  
2           you very much, Mr. Pregozen.

3           MS. CARDONI: Judge, can we take a short  
4           break?

5           JUDGE SAINSOT: Sure. Go ahead.

6                               (Whereupon, a short recess was  
7                               taken.)

8           JUDGE SAINSOT: Okay. Mr. -- we will just do  
9           the appearances. Well, why don't you go on the  
10          record, and then we will finish the appearances.

11          MS. CARDONI: Staff has nothing further of Mr.  
12          Pregozen.

13          JUDGE SAINSOT: Okay. Mr. Coffman?

14          MR. COFFMAN: Appearing on the behalf of AARP,  
15          John B. Coffman, 875 Tuxedo Boulevard, St. Louis,  
16          Missouri, 63119.

17          MR. RATNASWAMY: An additional appearance on  
18          behalf of Commonwealth Edison; John, J-O-H-N,  
19          Ratnaswamy, R-A-T-N-A-S-W-A-M-Y at the same address  
20          as Mr. Rippie.

21          JUDGE SAINSOT: Okay. Mr. Pregozen, you can  
22          step down. Thanks.

1                   Who do we have next? Mr. Hadaway?

2                   (Whereupon, the witness was duly

3                   sworn.)

4                   SAMUEL C. HADAWAY,

5   having been first duly sworn, was examined and

6   testified as follows:

7                   DIRECT EXAMINATION

8   BY MR. JOHNSON:

9           Q.     Good morning, Mr. Hadaway. Would you  
10   please state and spell your full name for the  
11   record?

12          A.     My name is Samuel C. Hadaway,  
13   H-A-D-A-W-A-Y.

14          Q.     And by the way, it's Mark Johnson again.  
15   And by whom are you employed, Dr. Hadaway?

16          A.     My company's name is FINANCO,  
17   Incorporated.

18          Q.     Okay. And how do you spell that?

19          A.     F-I-N-A-N-C-O.

20          Q.     Thank you. And what is your position  
21   there?

22          A.     I am the owner of the company.

1           Q.     Okay. Thank you. Now, I provided you  
2     with two documents, one of which includes an  
3     attachment. Are these the documents that you  
4     previously designated as your direct and rebuttal  
5     testimony on rehearing?

6           A.     Yes.

7           Q.     And let's first turn to your direct  
8     testimony on rehearing, which is designated as  
9     ComEd Exhibit 33.0. That constitutes five pages of  
10    narrative testimony and Exhibit 33.1; is that  
11    correct?

12          A.     Yes.

13          Q.     And together these exhibits constitute  
14    your direct testimony on rehearing, right?

15          A.     Yes.

16          Q.     And Dr. Hadaway, did you prepare or  
17    cause to be prepared under your direct supervision  
18    and control ComEd Exhibit 33.0?

19          A.     I did.

20          Q.     And are there any additions or  
21    corrections that you need to make to Exhibit 33.0?

22          A.     No.

1           Q.     And if I were to ask you the same  
2     questions as appear in that exhibit today would you  
3     give these same answers?

4           A.     Yes.

5           Q.     Next, let's turn to your rebuttal  
6     testimony, which is marked as ComEd Exhibit 37.0  
7     and includes 12 pages of narrative testimony; is  
8     that correct?

9           A.     Yes.

10          Q.     And did you prepare or cause to be  
11     prepared under your direct supervision and control  
12     ComEd Exhibit 37.0?

13          A.     Yes, I did.

14          Q.     And are there any additions or  
15     corrections that you need to make to Exhibit 37.0?

16          A.     No.

17          Q.     And if I were to ask you the same  
18     questions as appear in Exhibit 37.0 today would you  
19     give these same answers?

20          A.     Yes.

21          MR. JOHNSON: Your Honors, I hereby move for  
22     admission into evidence of ComEd Exhibits 33.0,

1 33.1 and 37.0.

2 JUDGE SAINSOT: Any objections?

3 Hearing none, your motion is granted,  
4 and 33.0, 31.0 and 37.0 are admitted into evidence.  
5 Thank you -- excuse me. 33.1, not 31.0.

6 MR. JOHNSON: Right. 33.0 and 33.1.

7 JUDGE SAINSOT: Right.

8 (Whereupon, ComEd Exhibit Nos. 33.0,  
9 33.1 and 37.0 were admitted into  
10 evidence.)

11 MR. JOHNSON: Okay. Thank you. With that,  
12 Mr. Hadaway is available for cross-examination.

13 CROSS-EXAMINATION

14 BY MS. CARDONI:

15 Q. Good morning, Mr. Hadaway. My name is  
16 Jessica Cardoni. I represent Staff, and I  
17 literally have just a couple questions for you this  
18 morning.

19 A. Good morning.

20 Q. Would you agree that all else equal, a  
21 triple B rated bond is less likely to default  
22 within two years than sometime within the next



1 30 years?

2 A. It's a default question. I don't recall  
3 if you have got that in the testimony, but I  
4 suppose that's true.

5 Q. Okay. Would you agree that two-year  
6 bonds usually have lower yields than 30-year bonds,  
7 all else equal?

8 A. Yes.

9 MS. CARDONI: That's all I have. Thank you.

10 JUDGE SAINSOT: Who else?

11 CROSS-EXAMINATION

12 BY MS. SATTER:

13 Q. I just have one question.

14 Mr. Hadaway, looking at Page 3 of your  
15 rebuttal testimony, on Line 54 you say that the  
16 interest rate recommendations would consistently  
17 deprive ComEd of its authorized rate of return on  
18 its EIMA investments. Are you with me?

19 A. Yes, I am.

20 Q. Are you here referring to the interest  
21 rate on the reconciliation balance?

22 A. Yes. I am referring to the Staff and

1 interveners' recommendations for that interest  
2 rate, yes.

3 Q. So it's the interest rate on the  
4 reconciliation balance that we are talking about  
5 here, correct?

6 A. Correct.

7 Q. Okay. And you agree with me that the  
8 interest rate on rate base generally is set --  
9 excuse me. Strike that.

10 You would agree that the return for  
11 shareholders on rate base is set in the law that  
12 created the forming the rate base process?

13 A. Yes.

14 MS. SATTER: Thank you.

15 MR. JOHNSON: We don't have any further  
16 redirect.

17 JUDGE SAINSOT: Okay. And there is nobody  
18 else for cross?

19 MR. COFFMAN: No questions, your Honor.

20 JUDGE SAINSOT: Well, thanks, Mr. Hadaway.  
21 You can step down.

22 The next witness is Mr. Bridal. He is a

1 Staff in Springfield. Good morning, Mr. Bridal.

2 MR. BRIDAL: Good morning.

3 JUDGE SAINSOT: I am going to swear you in.

4 (Whereupon, the witness was duly  
5 sworn.)

6 RICHARD W. BRIDAL,  
7 having been first duly sworn, was examined and  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SAGONE:

11 Q. Good morning, Mr. Bridal.

12 A. Good morning.

13 Q. Could you please state your full name  
14 for the record and spell your last name?

15 A. My name is Richard W. Bridal,  
16 B-R-I-D-A-L.

17 Q. And who is your employer, and what is  
18 your business address?

19 A. I am employed by the Illinois Commerce  
20 Commission. My business address is 527 East  
21 Capitol Avenue, Springfield, Illinois, 62701.

22 Q. And what is your position at the

1 Illinois Commerce Commission?

2 A. I am an accountant in the accounting  
3 department of the financial analysis division.

4 Q. Did you prepare written exhibits for  
5 submittal in this proceeding?

6 A. I did.

7 Q. Do you have before you a document which  
8 has been marked for identification as ICC Staff  
9 Exhibit 26.0, which --

10 A. I do.

11 Q. Which consists of a cover page, table of  
12 contents, 14 pages of testimony and is entitled,  
13 Direct Testimony on Rehearing of Richard W. Bridal,  
14 II?

15 A. Yes.

16 Q. Did you prepare that document for  
17 presentation in this matter?

18 A. I did.

19 Q. Do you have any corrections to make to  
20 ICC Staff Exhibit 26.0?

21 A. No.

22 Q. Is the information contained in ICC

1 Staff Exhibit 26.0 true and correct, to the best of  
2 your knowledge?

3 A. It is.

4 Q. If I were to ask you the same questions  
5 as set forth in ICC Staff Exhibit 26.0 would your  
6 responses be the same today?

7 A. They would.

8 MR. SAGONE: Your Honor, I would move for  
9 admission into evidence of ICC Staff Exhibit 26.0,  
10 and I would note for the record that this is the  
11 document that was filed via e-Docket on July 26th,  
12 2012.

13 JUDGE SAINSOT: Any objections?

14 Okay. Hearing none, your motion is  
15 granted.

16 MR. SAGONE: Mr. Bridal is now available for  
17 cross examination.

18 JUDGE SAINSOT: Just for the record, Staff  
19 Exhibit 26.0 is entered into evidence.

20 (Whereupon, Staff Exhibit 26.0 was  
21 admitted into evidence.)

22 CROSS-EXAMINATION

1 BY MR. RATNASWAMY:

2 Q. Good morning, Mr. Bridal.

3 A. Good morning.

4 Q. My name is John Ratnaswamy. I am one of  
5 the attorneys for Commonwealth Edison Company.

6 JUDGE SAINSOT: Mr. Ratnaswamy, you're going  
7 to have to speak up. If I can't hear you, and I'm  
8 pretty close to you, no one else will.

9 BY MR. RATNASWAMY:

10 Q. Thank you, your Honor.

11 Could you turn to Pages 4 and 5 of your  
12 direct testimony on rehearing, please?

13 A. Okay. I am there.

14 Q. Okay. And this is part of your  
15 testimony in support of your average rate base  
16 methodology for a reconciliation proposal; is that  
17 correct?

18 A. These are some other examples of the  
19 Commission's use of an average rate base for a  
20 reconciliation component.

21 Q. Thank you. And the two examples you  
22 discuss in brief are water and -- and involve the

1 statutory mechanism also governed by Part 656 of  
2 the Commission's rules relating to water and sewer  
3 utility recovery on certain non-revenue producing  
4 plants. That's one of the two examples?

5 A. I'm sorry. Can you repeat that? I  
6 could not hear the first part of your question.

7 Q. Sure. There is two examples on those  
8 pages. One of them involves riders for recovery by  
9 water and sewer utilities of costs associated with  
10 certain non-revenue producing plants; is that  
11 right?

12 A. Yes, for the Qualified Infrastructure  
13 Plant. I refer to it also as the, Q-I-P, or QIP.

14 Q. Right. And the other example is a  
15 formal rider of Peoples Gas involving  
16 infrastructure recovery, specifically a recovery of  
17 accelerated main replacement costs; is that right?

18 A. I believe that's drafted; the rider ICR,  
19 which stands for Infrastructure Cost Recovery.

20 Q. Okay. And as far as the water and sewer  
21 utility riders, would you agree that there is a  
22 section of the Public Utilities Act that you

1 reference, 9-220.2, that provides for such riders?

2 A. Yes.

3 Q. Okay. And would you agree that that is  
4 a relatively short section of the act? More  
5 specifically, if you were to print it out, it would  
6 be less than half a page?

7 A. That sounds correct.

8 Q. Okay. And in fact, it only has one  
9 sentence regarding reconciliation; is that right?

10 A. I do not recall all that's there.

11 Q. And the reconciliation that is provided  
12 for under the statute -- and I believe this is  
13 reflected in your testimony -- is the  
14 reconciliation of amounts collected versus costs;  
15 is that correct?

16 A. Could you point me to my -- where in my  
17 testimony I discuss that?

18 Q. Sure. Beginning at Line 96.

19 A. Yes, I see that.

20 Q. Okay. And do you understand that the  
21 formula rate that is involved in this current case,  
22 there is not a reconciliation of amounts collected,



1 correct?

2 A. I understand that in most cases we are  
3 reconciling amounts that was derived from a proxy  
4 to actual amounts.

5 Q. Okay. Is the answer to my question,  
6 yes, the formula rate involving the current case  
7 does not involve reconciliation of amounts  
8 collected?

9 A. Reconciliation in the formula rate  
10 involves the reconciliation of a projected revenue  
11 requirement proxy for the revenue requirement that  
12 was a comparison of that proxy to the revenue --  
13 the actual revenue requirement for the rate given.

14 Q. Thank you. And would you also agree  
15 that unlike Section 9-220.2, Section 16-108.5 of  
16 the act, which is the section relating to the  
17 formula rate in this case, is quite lengthy?

18 A. Yes.

19 Q. Okay. And, in fact, if you printed it  
20 out, it would be about 28 pages, single spaced?

21 A. It may be. It is a very lengthy and  
22 complex section.

1           Q.     All right.  Would you also agree that it  
2     contains multiple provisions relating to the  
3     reconciliation in particular?

4           A.     As I sit here, I recall Subsection  
5     (d) (1) referring to the reconciliation.

6           Q.     Do you recall whether it is also  
7     referred to in Subsection (c)?

8           A.     I believe that it may be.

9           Q.     Okay.  And would you agree that in  
10    Subsection (d) there is considerably more than one  
11    sentence about the reconciliation?

12          A.     Yes.

13          Q.     You -- your testimony refers to Rider  
14    ICR.  Are you familiar with Rider ICR?

15          A.     I read the tariff.

16          Q.     Okay.  Would you agree that Rider ICR  
17    was modeled by Peoples Gas on the Part 656 riders?

18                 JUDGE SAINSOT:  The what riders?

19                 MR. RATNASWAMY:  Part 656 riders.

20                 JUDGE SAINSOT:  Are you talking about the  
21    water and sewer riders?

22    BY MR. RATNASWAMY:

1           Q.     Yes. I am asking him if Rider ICR was  
2 modeled by People's Gas on the riders under Part  
3 656.

4           A.     I do not know if that's what they  
5 modeled the rider after.

6           Q.     All right. Do you have the documents  
7 that I e-mailed yesterday?

8           A.     I do.

9           Q.     Okay. Could you pull out the one that  
10 is an excerpt from the Commission order in which  
11 Rider ICR was approved, please?

12          A.     Okay. I have before me a document that  
13 you provided that the cover sheet indicates it is  
14 the January 21st, 2010 Order in Docket 09-0166,  
15 09-0167 Consolidated. Is that the document that  
16 you are referring to?

17          Q.     Yes, Mr. Bridal. Thank you. Could you  
18 look at Page --

19          MR. SAGONE: Objection, foundation.

20          MR. RATNASWAMY: He has testified he is  
21 familiar with the rider. This is the Commission  
22 order that approved the rider.

1           MR. SAGONE: He testified he is familiar with  
2 the rider. He has not testified that he is  
3 familiar with the order.

4           MS. SATTER: Does the company have copies of  
5 the exhibit for other parties?

6           MR. RATNASWAMY: I wasn't planning to mark  
7 them or offer them.

8           JUDGE SAINSOT: Well, I have a service problem  
9 with relevance. What does this have to do with  
10 anything?

11          MR. RATNASWAMY: Well, he is making a point  
12 where he is using two examples, your Honor. My  
13 point is the Commission itself found in that order  
14 that the Rider ICR was modeled on Part 656 riders,  
15 so --

16          JUDGE SAINSOT: The tariff is completely  
17 different than the order.

18          MR. RATNASWAMY: My point, your Honor, is that  
19 if one is modeled on the other, the probative value  
20 of having two examples is lessened.

21          JUDGE SAINSOT: But what has that got to do  
22 with the order?

1           MR. RATNASWAMY: The order finds that the  
2   tariff is modeled on the Part 656 riders.

3           JUDGE SAINSOT: And you are cross-examining an  
4   accountant about that?

5           MR. RATNASWAMY: I withdraw the question then.

6   BY MR. RATNASWAMY:

7           Q.     Mr. Bridal, you indicated you are  
8   familiar with Rider ICR. Would you agree in brief  
9   that when the Rider ICR was in operation in any  
10   given year during the period from April through  
11   December it provided for a cost recovery of  
12   qualifying main replacement costs incurred in that  
13   same year from January through December?

14          A.     Subject to check, I believe that's  
15   correct.

16          Q.     All right. And would you agree that  
17   both the Statute 9-220.2 and Part 656 allow for  
18   sewer and water riders under those provisions in  
19   which costs are recovered in the same year in which  
20   they are incurred?

21          A.     Could you repeat that one more time?

22          Q.     Sure. Would you agree that under Part

1     656 and Section 9-220.2 the water and sewer utility  
2     riders also allow for recovery of costs in the same  
3     year in which they are incurred?

4           A.     No. My understanding is that it allows  
5     for a recovery of forecasted or an actual cost,  
6     which are then trued up in a reconciliation.

7           Q.     Right. But in any given year -- let's  
8     call it Year X -- would you agree that the forecast  
9     that is used to set the charges in that year is the  
10    forecast of costs incurred in that same year?

11          A.     Yes.

12          MR. RATNASWAMY: Thank you, Mr. Bridal. I  
13    have no further questions.

14          JUDGE SAINSOT: Who is next?

15          MR. RIPPIE: That's all the cross that's on  
16    the schedule, your Honor.

17          MR. SAGONE: Can we have a couple minutes?

18          JUDGE SAINSOT: Sure. We will take a  
19    five-minute break.

20                   (Whereupon, a short break was  
21                   taken.)

22          JUDGE SAINSOT: Okay. Staff?

1           MR. SAGONE: Staff has nothing further, your  
2 Honor.

3           JUDGE SAINSOT: Okay. You can step down, Mr.  
4 Bridal. Thank you. Okay, Mr. Jolly.

5           MR. JOLLY: Thank you. I would like to make  
6 my appearance. On the behalf of the City of  
7 Chicago, Ronald D. Jolly, 30 North LaSalle, Suite  
8 1400, Chicago, Illinois, 60602.

9           JUDGE SAINSOT: Mr. Jolly, you probably  
10 weren't here for my little speech on speaking up  
11 for the new court reporter.

12          MR. JOLLY: Okay. I will keep that in mind.  
13 Thank you.

14          JUDGE SAINSOT: Okay. For the record, this  
15 witness is ComEd witness, Ms. Houtsma.

16                               (Whereupon, the witness was duly  
17 sworn.)

18                               KATHRYN M. HOUTSMA,  
19 having been first duly sworn, was examined and  
20 testified as follows:

21                               DIRECT EXAMINATION

22          BY MR. JOHNSON:

1           Q.     Good morning, Ms. Houtsma.  Would you  
2     please state and spell your name for the record?

3           A.     Good morning.  My name is Kathryn M.  
4     Houtsma.  My business address is Commonwealth  
5     Edison Company, 3 Lincoln Center, Oak Brook  
6     Terrace, Illinois 60181.

7           Q.     And you are employed by ComEd, correct?

8           A.     I am.

9           Q.     Okay.  Thanks.  And what is your  
10    position there?

11          A.     I am vice president of regulatory  
12    projects.

13          Q.     And I provided you with two documents,  
14    both of which include attachments.  Are these  
15    documents that you previously designated as your  
16    direct and rebuttal testimony on rehearing?

17          A.     Yes.

18          Q.     Now, let's first turn to your direct  
19    testimony on rehearing, which is designated as  
20    ComEd Exhibit 32.0, which constitute 12 pages of  
21    narrative testimony and Exhibit 32.1; is that  
22    correct?



1           A.     Correct.

2           Q.     And together these exhibits reflect your  
3 direct testimony on rehearing; is that right?

4           A.     Yes.

5           Q.     And Ms. Houtsma, did you prepare or  
6 cause to be prepared under your direct supervision  
7 and control ComEd Exhibit 32?

8           A.     Yes.

9           Q.     And are there any additions or  
10 corrections that you need to make to Exhibit 32?

11          A.     No.

12          Q.     And if I were to ask you the same  
13 questions that appear in ComEd Exhibit 32 today,  
14 would you give the same answers?

15          A.     Yes.

16          Q.     And let's next turn to your rebuttal  
17 testimony on rehearing, which is marked as ComEd  
18 Exhibit 35.0 and includes 34 pages of narrative  
19 testimony and Exhibit 35.1, 35.2 and 35.3.  
20 Together these exhibits constitute your rebuttal  
21 testimony on rehearing, correct?

22          A.     That's correct.

1           Q.     And did you prepare or cause to be  
2     prepared under your direct supervision and control  
3     ComEd Exhibit 35?

4           A.     Yes.

5           Q.     And are there any additions or  
6     corrections that you need to make to that exhibit?

7           A.     No.

8           Q.     And if I were to ask you the same  
9     questions that appear in ComEd Exhibit 35 today,  
10    would you give these same answers?

11          A.     Yes.

12          MR. JOHNSON: I hereby move for admission into  
13    evidence ComEd Exhibits 32.0, 32.1, 35.0, 35.1,  
14    35.2 and 35.3.

15          JUDGE SAINSOT: Any objections?

16                 Hearing none, your motion is granted.  
17    ComEd Exhibit 32.0 and with the attachment 32.1,  
18    ComEd Exhibit 35.0 with the attachments 35.1  
19    through 35.3 are entered into evidence.

20                         (Whereupon, ComEd Exhibit Nos. 32.0  
21                         and 35.0 with were admitted into  
22                         evidence.)

1           MR. JOHNSON: Thank you, your Honors. And  
2           with that Ms. Houtsma is available for  
3           cross-examination.

4                           CROSS-EXAMINATION

5           BY MR. FEELEY:

6           Q.       Good morning. My name is John Feeley.  
7           I represent Staff.

8                       I would direct you to your rebuttal  
9           testimony at Page 26, Lines 574 through 576.

10          A.       Okay.

11          Q.       Is it correct that the income taxes  
12       included in the reconciliation balance that would  
13       result from the difference between the brevity  
14       requirement for 2015 at actual costs -- actual --  
15       had actual 2015 costs been known then the revenue  
16       requirement that was reflected in rates for 2015  
17       would be payable in 2017?

18          A.       I'm not sure if I understand your  
19       question, but if you are asking if the income taxes  
20       on the reconciliation revenues that are received  
21       related to the 2015 reconciliation will be paid in  
22       2017, then I would say that generally, yes, that's

1 correct. Of course, it's depending on other income  
2 tax provisions and the position to pay taxes that  
3 year, but as a general matter, yes.

4 Q. So if you disregard any other income  
5 taxes related to that reconciliation balance for  
6 2015 they would be paid in 2017?

7 A. Yes.

8 Q. Is that because 2017 is the year in  
9 which the 2015 reconciliation balance is reflected  
10 in ComEd's rates?

11 A. Yes.

12 Q. Assume that the ComEd revenue  
13 requirement for 2015 would have equaled 2 billion  
14 had actual 2015 costs been known, but that the  
15 revenue requirement that was reflected in rates for  
16 2015 was 1.9 billion, is it correct that the  
17 reconciliation balance for 2015 would be 100  
18 million excluding interest?

19 A. That sounds right.

20 Q. Okay. Is it correct that ComEd would  
21 include that 100 million reconciliation balance  
22 excluding interest in its 2015 revenue requirement

1 for financial reporting purposes?

2 A. Did you ask if it would include the \$100  
3 million in the revenue requirement for financial  
4 reporting purposes?

5 Q. Would ComEd include that 100 million  
6 reconciliation balance in its 2015 revenue for  
7 financial reporting purposes?

8 A. Yes. ComEd would report and accrue a  
9 revenue amount of 20 -- 100 million anticipating  
10 the future collection of revenue. That's correct.

11 Q. In what year would ComEd include the  
12 2015 reconciliation balance related revenue in its  
13 income tax return?

14 A. In 2017 when revenues are actually  
15 received.

16 Q. All right. Attached to your rebuttal  
17 testimony is an Exhibit 35.1. Look at that.

18 A. Okay.

19 Q. Did you prepare ComEd Exhibit 35.1?

20 A. Yes, it was prepared under my direction.

21 Q. Okay. And Exhibit 35.1 is very similar  
22 to ComEd Exhibit 12.1, which was attached to

1     your -- a piece of your testimony in the original  
2     proceedings, with the exception that Columns J, K  
3     and L that appear on 35.1 aren't on ComEd  
4     Exhibit 12.1; is that correct?

5             A.     That's correct.

6             Q.     Okay. Could you please read Note 1 on  
7     Exhibit 35.1? Actually, could you read it out  
8     loud?

9             A.     Note 1 says, "Prior to 2004, the  
10    accruals and contributions were recorded to the  
11    pension liability subaccounts rather than the  
12    pension asset."

13            Q.     Okay. And that same note appeared on  
14    Exhibit 12.1, correct?

15            A.     I believe it did.

16            Q.     Okay. All right. And by that note is  
17    it correct to say that prior to 2004, the pension  
18    accruals on the books of ComEd were greater on a  
19    cumulative basis than the contributions to the  
20    pension plan?

21            A.     At that point, yes. In 2005 you can see  
22    that there was an \$803 million cash contribution,

1 and that's what pushed the contributions to a point  
2 that they exceeded the accrued liabilities.

3 Q. Okay. And after 2004, then that  
4 relationship on a cumulative basis flipped so that  
5 the contributions in total were greater than the  
6 accruals, correct?

7 A. Correct.

8 Q. Still looking at Exhibit 35.1, would you  
9 agree that Line 6 on 35.1, normal quarterly  
10 contributions represents the actuarially determined  
11 minimum funding requirement?

12 A. Yes. These are the actual amounts that  
13 were contributed consistent with the actuarially  
14 determined minimum funding requirement.

15 Q. Okay. To the best of your knowledge,  
16 has ComEd consistently made those contributions to  
17 its pension plan?

18 A. Yes. ComEd has made all of the  
19 contributions shown on Lines 6 and 7 to the pension  
20 plan.

21 Q. Okay. Would you agree looking at --  
22 that on Line 3 on Exhibit 35.1, normal accruals

1 represents the actuarially determined pension  
2 expense?

3 A. Not exactly. The normal accruals  
4 represent the actual -- actuarially determined  
5 pension costs. So it includes annual accruals that  
6 are charged to both expense and capital. Some of  
7 those costs are capitalized to client accounts.

8 Q. And is it correct that the accruals are  
9 recorded on ComEd's books as pension expense and  
10 you just stated a portion is capitalized on the  
11 company's calculation of capitalized benefits for  
12 the period?

13 A. That's correct.

14 Q. Okay. Now, with these next few  
15 questions I'll just keep it a little simple. Let's  
16 assume that none of the pension accrual is  
17 capitalized.

18 A. Okay.

19 Q. Do you agree that the cost to the -- the  
20 cost of the pension plan to the company is an  
21 actuarially determined pension expense?

22 A. The amount that the company recognizes



1 as pension expense is actuarially determined, yes.

2 Q. So you agree that the costs of the  
3 pension plan to the company is an actuarially  
4 determined pension expense?

5 A. No. I think that's a different thing.  
6 The cost to the company is more than just the  
7 annual pension expense. The cost to the company is  
8 the cost of making the contributions to the pension  
9 plan, and these amounts on Line 3 represent what's  
10 recorded as a pension expense as in our example  
11 here as a pension expense, but that is not the only  
12 cost to the company.

13 Q. Well, then what is pension expense?

14 A. Pension expense is the annual  
15 recognition of the cost incurred to meet the  
16 liability associated with the obligation to  
17 employees that is outlined in the pension plan. So  
18 it recognizes the cost of providing the future  
19 benefit to employees today over their service life.  
20 It doesn't necessarily include the cost of any cash  
21 that is going to be needed to be raised to  
22 contribute money to the pension plan.

1           Q.     Okay. And the cost that you were  
2 referring to is the cost to the company, right?

3           A.     Yes.

4           Q.     That's not the cost to the participant?

5           A.     That's correct.

6           Q.     Did the company always record pension  
7 expense in its operating statement prior to 2004?

8           A.     Pension expense, is that your question?

9           Q.     Yes.

10          A.     Pension expense has -- yes, that's been  
11 a component of operating --

12          Q.     It gets reflected on the operating  
13 statement?

14          A.     It gets reflected as a component of the  
15 operating expense, and as I mentioned earlier, a  
16 portion of it gets capitalized to client accounts  
17 as well. That hasn't changed between 2004 and  
18 currently.

19          Q.     And has the company continued to report  
20 pension expense in its operating statement since  
21 2004?

22          A.     Yes. It's reported as an operating

1 expense and capitalized.

2 Q. And you are familiar with EIMA and in  
3 particular Section 16-108.5(c), correct?

4 A. Yes.

5 Q. Would you agree that one of the  
6 protocols of -- protocols in 16-108.5(c)(4)(D)  
7 provides for the recovery of pension expense in the  
8 formula rates?

9 A. Can you repeat the question?

10 MR. JOHNSON: Objection. Do you have a copy  
11 of that statutory section?

12 JUDGE SAINSOT: Right. She is not going to  
13 remember the small c's and the big D's and that.  
14 Who would?

15 BY MR. FEELEY:

16 Q. Without referring to statutory sections,  
17 I mean, you are familiar with the formula rate,  
18 correct?

19 A. I am.

20 Q. And pension expense, the expense that  
21 shows up on the company's operating statement, that  
22 gets taken into account in the formula rate,

1 correct?

2 A. It does.

3 Q. That's all I have on that statutory  
4 section. If I could direct your attention to your  
5 rebuttal, Lines 231 to 252.

6 A. Okay.

7 Q. At those lines you discuss mandatory  
8 versus discretionary pension contributions,  
9 correct?

10 A. Correct.

11 Q. And if you can look at your testimony,  
12 still your rebuttal, Lines 176 to 180.

13 A. Okay.

14 Q. There you discuss the company's  
15 definition of a pension asset, correct?

16 A. Yes. I am giving a definition of a  
17 pension asset under GAAP.

18 Q. Okay. But -- and that's the company's  
19 definition of what a pension asset is in this case,  
20 correct?

21 A. Under GAAP, yes.

22 Q. And at Line 180 when you mention net

1 periodic benefit costs, are periodic benefit costs  
2 the same as pension expense?

3 A. Generally, yes, again, with the caveat  
4 that pension -- the period benefit costs include  
5 amount capitalized.

6 Q. Okay. And on Line 180 you mention  
7 pension contributions. Are you referring to both  
8 mandatory and discretionary pension contributions?

9 A. Yes.

10 Q. And you have heard of the phrase,  
11 "normal and special pension contributions,"  
12 correct?

13 A. Yes.

14 Q. Okay. And would you agree that normal  
15 contributions is another word for mandatory  
16 contributions?

17 A. Yes.

18 Q. And would you agree that special  
19 contributions is another word for discretionary  
20 contributions?

21 A. Yes. Those are both used  
22 interchangeably in some of the documents in the

1 past.

2 MR. FEELEY: If I can approach the witness  
3 with a cross exhibit.

4 JUDGE SAINSOT: This is Staff Cross Exhibit 1.

5 MR. FEELEY: Well, our last cross exhibit in  
6 the original proceeding was 11. Do you want us to  
7 mark this as 12 or start back at 1?

8 JUDGE SAINSOT: Why don't we call it A.

9 MR. FEELEY: CUB marked theirs as 1 on  
10 rehearing.

11 JUDGE SAINSOT: Okay. 1 on rehearing.

12 (Whereupon, Staff Cross Exhibit No.  
13 1 on Rehearing was marked for  
14 identification.)

15 BY MR. FEELEY:

16 Q. So I don't know if -- okay.

17 Ms. Houtsma, I have handed to you what  
18 is going to be marked for identification as Staff  
19 Cross Exhibit No. 1 on rehearing. It's the  
20 company's response to Staff data requests TEE  
21 14.01, 14.02, 14.03 and then TEE 13.04, which has  
22 an Attachment 1, and it's my understanding that you

1 are responsible for these data request responses;  
2 is that correct?

3 A. That's correct.

4 Q. Okay.

5 JUDGE SAINSOT: You prepared them, Ms.  
6 Houtsma?

7 THE WITNESS: Under my direction, yes.

8 JUDGE SAINSOT: Okay, continue.

9 MR. JOHNSON: John, just one question. So  
10 it's 14.01, 14.02, 14.03, but then 13.04?

11 MR. FEELEY: Yes. Oh, I'm sorry. 13.04 is  
12 referenced in response to 14.02.

13 MR. JOHNSON: Okay.

14 MR. FEELEY: And it has an attachment. That  
15 response also refers to a TEE 3.07 and 10.06. I  
16 didn't attach those, but if you want them attached,  
17 I have them here.

18 BY MR. FEELEY:

19 Q. So you are responsible for these  
20 responses, correct?

21 A. I am. I guess I will clarify that they  
22 were prepared under my direction, and also I worked

1 with legal counsel.

2 MR. FEELEY: At this time Staff would move to  
3 admit into evidence Staff Cross Exhibit No. 1 on  
4 Rehearing, the company's response. That's TEE  
5 14.01, 14.02, 14.03, 13.04 and Attachment 1 to  
6 13.04.

7 MR. JOHNSON: Yeah. Just subject to getting  
8 all the attachments to these.

9 MR. FEELEY: Well, I have those.

10 MR. JOHNSON: Great. Then no objections as  
11 long as the attachments go into the record as well.

12 JUDGE SAINSOT: What -- is that not what you  
13 gave us, Mr. Feeley?

14 MR. FEELEY: Well, I gave you one -- one of  
15 the DRs referred -- there is three DRs. I only  
16 attached one of them, but the company would also  
17 like the other ones referred to attached.

18 MR. JOHNSON: Yeah. In 14.02, right.

19 MR. FEELEY: Yeah. So we are going to have to  
20 staple them all together.

21 JUDGE SAINSOT: For the record, I have Cross  
22 Exhibit -- Mr. Feeley is going to go over what that



1 includes or will include after the break.

2 MR. FEELEY: Staff Cross Exhibit No. 1 on  
3 Rehearing; company's response to TEE 14.01, TEE  
4 14.02, TEE 14.03, TEE 13.04, Attachment 1 to 13.04;  
5 company's response to TEE 10.06, TEE 3.07, which  
6 has an Attachment 1, and that's one page, and  
7 Attachment 2, which is, it looks like, five pages.

8 JUDGE SAINSOT: Okay. And you will get that  
9 all together all nice and neat for me when we take  
10 a break.

11 As memory serves me, ComEd has no  
12 objection?

13 MR. JOHNSON: That's correct. There is a  
14 reference in 13.04 to TEE 3.02, but I will ask  
15 about that with the witness on the break. So  
16 notwithstanding that, no objection to the cross  
17 exhibits.

18 JUDGE SAINSOT: Okay. Then this cross exhibit  
19 as to be assembled by Mr. Feeley during the break  
20 will be admitted into evidence.

21

22

1 (Whereupon, Staff Cross Exhibit No.  
2 1 on rehearing was admitted into  
3 evidence.)

4 BY MR. FEELEY:

5 Q. Ms. Houtsma, you are familiar with  
6 Docket 07-0566, correct?

7 A. Yes.

8 Q. And you were the company witness on the  
9 pension related issues from that docket, correct?

10 A. I was a pension witness. I can't recall  
11 offhand if there were others, but I was a pension  
12 witness.

13 Q. Okay. Is it correct that in Docket  
14 07-0566 ComEd requested that the Commission allow  
15 ComEd to recover the same \$25.3 million return on  
16 ComEd's 2005 discretionary pension contribution  
17 that the Commission also allowed as an operating  
18 expense in the 05-0597 Order on Rehearing?

19 A. That sounds correct. I believe that  
20 ADIT balances might have changed. So the net  
21 amount might have been slightly different.

22 Q. Okay. I just have a few more questions.

1     Okay. In your testimony you refer to the Order on  
2     Rehearing in 05-0597, correct, the Corrected Order  
3     on Rehearing?

4             A. In my testimony, my rehearing testimony  
5     in this docket?

6             Q. In this docket, yes, you refer to the  
7     Corrected Order on Rehearing in 05-0597?

8             A. That's correct.

9             Q. Do you have a copy of that order in  
10    front of you? If not, I have a copy.

11            A. I do not.

12            Q. Thank you. Okay. First, actually, I  
13    will go to your testimony. Looking at your  
14    Exhibit 35.1. Okay. In your rebuttal testimony on  
15    rehearing when you talk about pension asset, is it  
16    correct that you are referring to the amount the  
17    company has recorded in Account 186, miscellaneous  
18    deferred debits on its books?

19            A. Well, often -- in my testimony I will  
20    often refer to jurisdictional amounts. So the  
21    amount that is recorded on Account 186 on our books  
22    would be before jurisdictional allocations.

1 Q. Of the pension asset?

2 A. Right, between transmission and  
3 distribution, for example.

4 Q. Okay. And looking at your Exhibit 35.1,  
5 that's in terms of jurisdictional, correct?

6 A. No.

7 Q. Oh, I'm sorry. 35.1 is before  
8 jurisdictional; is that right?

9 A. That's correct.

10 Q. And --

11 JUDGE SAINSOT: You mean before the Illinois  
12 jurisdiction is carved out, right?

13 THE WITNESS: Yes, that's correct. This would  
14 include both transmission related and distribution  
15 related. This also includes the 803. This is the  
16 total balance recorded in Account 186. So it also  
17 includes the 803.

18 BY MR. FEELEY:

19 Q. Okay. So Line 8, that is showing the  
20 pension asset that's reported in Account 186?

21 A. Yes.

22 Q. All right. Now, back to that order that

1 I handed out to you. If you could look at your  
2 testimony Lines 144 to 147.

3 A. My testimony, Exhibit 32?

4 Q. Your Exhibit 35.0 in this case at Lines  
5 144 to 147.

6 A. Okay.

7 Q. All right. And then you talk about  
8 something about the plain language of the Corrected  
9 Order on Rehearing. Could you identify what  
10 statement from the order you are referring to? And  
11 that would be the Corrected Order on Rehearing in  
12 05-0597.

13 A. I am referring specifically to the  
14 language in the fourth paragraph.

15 Q. On --

16 A. On Page 28 under Commission Analysis and  
17 Conclusions.

18 JUDGE SAINSOT: Could you read that for us,  
19 please?

20 THE WITNESS: And specifically I am referring  
21 to the first sentence that says, "Accordingly, the  
22 Commission approves cost recovery of the pension

1     asset under Alternative 3 that ComEd proposed on  
2     rehearing."

3     BY MR. FEELEY:

4             Q.     And would you agree that the amount  
5     that's referenced in that statement was the 803  
6     million contribution made by Exelon to ComEd's  
7     pension plan?

8             A.     That's correct.

9             Q.     And referring to your Exhibit 35.1, do  
10    you agree that the 803 million that was referenced  
11    in the Corrected Order on Rehearing is the same as  
12    the amount shown in Column D, Line 7 in  
13    Exhibit 35.1?

14            A.     That's correct.

15            Q.     If you go to Line 231 of your  
16    Exhibit 35.

17            A.     Can you repeat that for me?

18            Q.     Line 231 of your Exhibit 35.

19                    Okay. You state in your testimony there  
20    that there is no significance between the terms  
21    mandatory and discretionary contributions outside  
22    the context of pension funding laws. Do you see

1       that?

2           A.     Ah-huh.

3           Q.     Okay.  Who decides the amount of the  
4       pension funding each year?

5           A.     Well, ultimately the senior management  
6       of Exelon and ComEd determine what the appropriate  
7       amount is.

8           Q.     The board of directors?

9           A.     And it's approved by the board of  
10       directors, correct.

11          Q.     Okay.  Do you know, has the board ever  
12       decided not to make the minimum contribution  
13       required by ERISA?

14          A.     I'm not aware if they have failed to  
15       meet minimum requirements, no.

16          Q.     So to the best of your knowledge, they  
17       have always made the minimum contributions required  
18       by ERISA?

19          A.     To the best of my knowledge, yes.

20          Q.     The board has done that at ComEd?

21          A.     I guess I can't speak to what -- in some  
22       years if the minimum funding requirement is small,

1     it may not require a board approval. I'm just not  
2     sure at what point they need to approve it, but to  
3     the best of my knowledge, the minimum funding  
4     requirements have always been met.

5           Q.     All right. The next -- I just have a  
6     few more questions dealing with -- nothing is  
7     confidential, but I am referring to that  
8     confidential attachment to Ms. Ebrey's testimony,  
9     the company's response to TEE 13.03, Attachment 1.

10           And I am just generally asking questions  
11     about that. Are you familiar with that?

12           A.     I would like to get it in front of me.  
13     What was the Exhibit number?

14           Q.     It's -- I think it -- hold on.

15           A.     Attachment F, is that --

16           Q.     Attachment F.

17           A.     Okay.

18           Q.     Okay. Based on information provided on  
19     TEE 13.03, Attachment 1, (confidential), which is  
20     attached to Ms. Ebrey's testimony, there are a  
21     number of factors the company board of directors  
22     has to consider when deciding the level of funding



1 to make to the pension trust, correct?

2 A. I'm sorry. Did you say TEE 13.03 or  
3 13.01?

4 JUDGE SAINSOT: Can you just show it to her?

5 BY MR. FEELEY:

6 Q. Well, you are looking at Attachment F to  
7 Ms. Ebrey's testimony, correct?

8 A. Correct.

9 Q. And that's the company's response to a  
10 data request sent by Staff, correct?

11 A. That's correct. It's the company's  
12 response to data request TEE 13.03; although, it's  
13 labeled here as 13.01, but it's 13.03.

14 Q. Okay. But based upon the company's  
15 response to that data request, would you agree that  
16 there are a number of factors the company board of  
17 directors has to consider when deciding the level  
18 of funding to make to the pension trust?

19 A. That's fair.

20 Q. Okay. And some years they decide to  
21 make discretionary contributions, and in other  
22 years they decide not to make those contributions,

1 correct, those contributions being discretionary  
2 ones?

3 A. That's true.

4 Q. Okay. But the board makes the ultimate  
5 decision of whether or not to make those  
6 discretionary contributions to the trust, correct?

7 A. As a general matter, yes, and if the  
8 discretionary contributions are large enough that  
9 they meet the threshold that requires approval, but  
10 I think the discretionary contributions we are  
11 talking about would have needed to have been  
12 approved by the board.

13 Q. The last two questions. Looking at your  
14 testimony at Line 255. Do you have that in front  
15 of you?

16 A. Yes.

17 Q. Okay. In your testimony in that line  
18 you make the statement that, "ComEd must still  
19 transfer 100 million to the pension trust fund."  
20 Do you see that?

21 A. Yes.

22 Q. Okay. From your prior discussion of the

1     example that you discussed back on -- I think it's  
2     Page 9 -- I'm sorry -- Page 11, you designate --  
3     you designated 10 million as mandatory and 90  
4     million as discretionary, correct?

5             A.     Correct.

6             Q.     And is it correct that ComEd must  
7     contribute 10 million in your example, but the 90  
8     million contribution would have been based on a  
9     decision made by the board of directors?

10            A.     I guess just with the caveat that I am  
11     not sure sitting here what the threshold for a  
12     contribution requiring board approval is, but it  
13     would have been made here by a decision of senior  
14     management or one of the directors.

15            Q.     Okay. But if a discretionary  
16     contribution is above -- you are saying there is  
17     some minimum level that doesn't need the board  
18     approval, but if it's above that minimum level then  
19     the board makes the ultimate decision on that  
20     amount, correct?

21            A.     Yes.

22            MR. FEELEY: That's all I have.

1 JUDGE SAINSOT: Do you want to do a redirect  
2 on this, or do your redirect all -- I think the  
3 record will be a little clearer if you did your  
4 redirect of these questions. You know, and we  
5 didn't forget about you. I just think, you know,  
6 it might be -- if you have redirect on Staff, it  
7 might be a little clearer that you do it now.

8 MR. JOHNSON: Sure. So we will take five  
9 minutes.

10 JUDGE SAINSOT: Okay.

11 (Whereupon, a short break was  
12 taken.)

13 JUDGE SAINSOT: Okay. Do you want to go back  
14 on the record?

15 REDIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q. ComEd just has one redirect question for  
18 Ms. Houtsma.

19 And Ms. Houtsma, I would like to direct  
20 your attention to two different cross exhibits that  
21 Mr. Feeley had referenced. One is the statutory  
22 section under -- I believe it's 16-108(c)(2) --

1     yeah. It's 16-108.5(c)(4)(D), and then also back  
2     to the ComEd Exhibit 35.1. And taking, for  
3     example, the Column I, which is the 2010 year as an  
4     example, is the periodic pension cost and expense  
5     that's recorded in their accrual there -- and  
6     that's -- that's accrual that's recovered under  
7     this provision of the act that we had discussed in  
8     (c)(4)(D), does that accrual include the recovery  
9     of the 28 million in mandatory contributions that's  
10    reflected also in Column I a few lines down in Line  
11    6?

12           A.     No, it does not. But the periodic  
13    pension cost, which forms the basis for pension  
14    expense recovery under Part B of this document  
15    under the statute includes in five basic components  
16    that are laid out on Attachment B to Staff  
17    Exhibit 4, and that includes the service cost and  
18    interest cost as expected return on plan assets,  
19    amortization of prior service costs and the  
20    amortization of gains and losses, but it does not  
21    provide for the recovery of the \$28 million in  
22    normal contributions, nor does it provide for the

1 cost of financing those.

2 MR. JOHNSON: Thank you, Ms. Houtsma. ComEd  
3 has nothing further.

4 RECROSS-EXAMINATION

5 BY MR. FEELEY:

6 Q. I have one follow-up. So the 28 million  
7 there in Column I, that would get reflected in the  
8 next year's pension expense? That gets reflected  
9 in the formula rate, correct?

10 A. It gets -- there is a difference between  
11 being reflected and being recovered. So it impacts  
12 pension expense in the sense that if the  
13 contribution is made, that contribution generates  
14 returns on assets that reduce pension expense.  
15 That gets reflected in as a component of the  
16 pension cost as the expected return on plan assets  
17 component. It doesn't get reflected as a cost that  
18 gets recovered in any year. It's not -- the  
19 contributions themselves are not a component of  
20 periodic pension expense.

21 Q. So looking at that 28 million again on  
22 the next year in Column J, the accruals there,

1     those accruals would be impacted by that 28 million  
2     contribution in that prior year, correct?

3           A.     The accruals will be reflected to the  
4     extent that they will reflect the benefit of return  
5     on the assets from that contribution. It will not  
6     reflect cost recovery of the 28 million itself. So  
7     it reduces pension expense. It doesn't -- doesn't  
8     increase it in the sense that the pension expense  
9     provides for the recovery, and there is a very big  
10    difference.

11           MR. FEELEY: That's all I have.

12           MR. JOHNSON: Okay. ComEd has nothing  
13    further.

14           JUDGE SAINSOT: Mr. Coffman, do you have any  
15    questions?

16           MR. COFFMAN: No questions. Thank you.

17           JUDGE SAINSOT: Okay. How about we take a  
18    break?

19           MR. BERNET: Your Honor, on the schedule --  
20    just so you know, on the schedule I had an hour for  
21    Ms. Ebrey. I probably don't have that long, but we  
22    can take a break.

1 JUDGE SAINOT: Right. Well, and we haven't  
2 forgotten about the AG. It's just hot in here. So  
3 why don't we take a break.

4 (Whereupon, a short break was  
5 taken.)

6 JUDGE SAINOT: All right. We are back on the  
7 record in Docket 11-0721, and we are continuing  
8 with the cross-examination of Ms. Houtsma. Ms.  
9 Lusson, I believe, looks ready.

10 CROSS-EXAMINATION

11 BY MS. LUSSON:

12 Q. Thank you. Good afternoon, Ms. Houtsma.  
13 My name is Karen Lusson, from the Attorney  
14 General's office.

15 A. Good afternoon.

16 Q. First of all, would you agree that under  
17 the new formula rate sections of the act the  
18 company is entitled to true up its projected  
19 revenue requirement with its actual costs incurred  
20 for that relevant 12-month period?

21 A. Not entirely, because I don't agree with  
22 the characterization of the initial revenue



1 requirement as a projection. There is a true-up of  
2 the initially filed and implemented revenue  
3 requirement to the actual --

4 THE COURT REPORTER: I'm sorry. With the fan,  
5 I am having a hard time hearing you.

6 (Whereupon, a discussion was had off  
7 the record.)

8 JUDGE SAINCOT: Do you want to repeat your  
9 question, Ms. Lusson?

10 BY MS. LUSSON:

11 Q. Sure. Ms. Houtsma, would you agree that  
12 under the new formula rate sections of the act,  
13 that the company is entitled to true up the revenue  
14 requirement set in the initial formula rate  
15 proceeding with its actual expenses incurred for  
16 that relevant 12-month period, costs and expenses,  
17 I should say?

18 A. Yes. And if I might just clarify, the  
19 revenue requirement that is trued up was -- if  
20 there is a true-up it involves a revenue  
21 requirement based on the actual costs for a given  
22 year to the revenue requirement that was in effect

1 for that year.

2 Q. Okay. And would you agree that that  
3 opportunity, that reconciliation opportunity,  
4 permits ComEd to record a regulatory asset each  
5 year for what it's owed or must return to  
6 ratepayers when that reconciliation is calculated?

7 A. Yes.

8 Q. And is it true that ComEd is, in fact,  
9 required under accrual basis accounting rules set  
10 forth in generally accepted accounting principles  
11 to record a regulatory asset or liability in  
12 connection with the estimated impact of  
13 reconciliation calculations under the act?

14 A. Yes, I agree with that.

15 Q. And when ComEd closed its books for  
16 calendar year 2011 it's correct, isn't it, that it  
17 recorded a credit entry that was an estimate of the  
18 additional revenues it was entitled to collect  
19 under the reconciliation procedures of the act with  
20 a debit to a regulatory asset representing  
21 essentially an IOU from ratepayers?

22 A. ComEd at the end of 2011 recorded a

1 regulatory asset for the receivables that it  
2 expected to recover in future periods as a result  
3 of the true-up provisions. That was based on an  
4 estimate of what was expected to be approved in the  
5 proceeding that occurred in the order that came out  
6 in May, and that regulatory asset was reversed as a  
7 result of the May 2012 order.

8 Q. And in 2011 the company recorded a  
9 regulatory asset of approximately 29 million to  
10 represent what it thought at the time would be an  
11 underrecovery of its revenue requirement?

12 A. That sounds right.

13 Q. Now, the recording of that regulatory --  
14 well, let me backtrack first.

15 Would you agree then that under the  
16 reconciliation process any increase in expense  
17 above what was included in setting rates will be  
18 offset by additional revenues recorded as a  
19 regulatory asset that will later be collected  
20 through the reconciliation?

21 A. Can you repeat that question, please?

22 Q. Sure. Would you agree then that under

1 the reconciliation process, any increase in expense  
2 above what was included in setting rates under the  
3 formula rate process will be offset by additional  
4 revenues recorded as a regulatory asset that will  
5 later be collected through the reconciliation?

6 A. I don't know if I would agree that any  
7 increase in expense would be included in the  
8 regulatory asset. It would be any increase in  
9 expense that would expect to be recoverable through  
10 rates.

11 Q. Okay. With that caveat?

12 A. With that caveat, yeah. And, I guess,  
13 subject to other offsets for changes in rate base  
14 and capital structure and the cost of capital.

15 Q. Okay. In other words, the actual events  
16 that occurred during that relevant 12-month period?

17 A. The actual costs incurred during the  
18 12-month period.

19 Q. Now, would you agree that the recording  
20 of that regulatory asset in 2011 increased the  
21 company's income for that year?

22 A. Yes.

1           Q.     And that 29 million of added revenues  
2     thought to be later recoverable through the  
3     reconciliation increases net income recorded in  
4     2011 after deferred taxes are subtracted; is that  
5     correct?

6           A.     That's correct.

7           Q.     And essentially then net income is  
8     closed on the books, so to speak, and added into  
9     retained earnings, which is part of the common  
10    equity capital of the company?

11          A.     Correct.

12          Q.     And in that regard the regulatory asset  
13    increased the company's common equity for 2011?

14          A.     The -- the entry to establish the  
15    regulatory asset, yes, increased retained earnings,  
16    which in turn increases common equity.

17          Q.     Would you agree that the common equity  
18    in the company's capital structure used to  
19    determine the weighted average cost of capital that  
20    is the rate of return applied to the rate base  
21    already reflects the net regulatory asset related  
22    to the reconciliation adjustment?

1           A.     You are asking about the balance at the  
2     end of 2011?

3           Q.     Yes.

4           A.     The balance at the end of 2011 would  
5     reflect the estimated affect of the reconciliation  
6     adjustment, not the final.

7           Q.     Right, but otherwise you would agree  
8     with that, that representation about affecting the  
9     common equity for that year?

10          A.     Yes.

11          Q.     Would you agree that to the extent that  
12     the reconciliation process permits that true up  
13     that we have been talking about, that that  
14     reconciliation process introduces an element of  
15     stability into ComEd's earnings as compared to  
16     traditional ratemaking, which does not permit  
17     retroactive reconciliations of costs?

18          A.     I guess I'm not sure what you mean by  
19     stability. It produces a different revenue stream  
20     than would occur outside of a formula rate with the  
21     annual true-up proceedings.

22          Q.     And that different revenue stream

1     often -- assuming that you have increased costs  
2     because of the investment required under the  
3     provisions of the act that a different revenue  
4     stream is expected to be an increase in revenues;  
5     in other words, the reconciliation would be a  
6     positive amount owed to the company?

7           A.     It may be, but not always. I don't  
8     think right now the recommended reconciliation that  
9     most parties are recommending is positive.

10          Q.     So to the extent that ComEd's costs have  
11     increased as compared to what was said in the  
12     formula ratemaking proceeding the reconciliation  
13     permits the company to get or to assess from  
14     ratepayers the true-up, the actual -- of the actual  
15     costs that otherwise aren't permitted under  
16     traditional regulation?

17          A.     If actual costs are higher than what's  
18     reflected in the revenue requirement in effect for  
19     the year, then, yes, the true-up would be positive,  
20     and those actual costs are allowed to be recovered  
21     through rates.

22          Q.     And that's contrary to what's permitted

1 under traditional regulation, would you agree, that  
2 true-up process?

3 A. I don't know if it's contrary. It's  
4 just a -- it's a different process. Theoretically,  
5 I suppose one could have a series of rate cases  
6 every year that achieves that same -- a similar  
7 result, but it's a different operation than occurs.

8 Q. Well, would you agree that unlike  
9 traditional regulation, formula rates insures that  
10 for a 12-month period that -- strike that.

11 Would you agree that under formula rates  
12 the statute permits the true-up that we have been  
13 discussing to insure that costs incurred in a prior  
14 period are, in fact, recovered?

15 A. That's the intent.

16 Q. Plus interest?

17 A. (Inaudible response)

18 Q. That is a yes?

19 A. Yes.

20 Q. Okay. If you could turn to Page 28 and  
21 29 of your rebuttal testimony. There you discuss  
22 what you felt was wrong with Mr. Effron's proposal



1     about using a net of tax interest method to  
2     calculate interest on the reconciliation. Do you  
3     see that?

4           A.     Yes.

5           Q.     Now, as I understand your testimony at  
6     Line 618 through -- or 619 through 220 you believe  
7     that to be inappropriate to apply the interest rate  
8     on a net of tax basis because this approach ignores  
9     the fact that the revenue collected to recover the  
10    interest on the reconciliation will be subject to  
11    income taxes; is that your testimony?

12          A.     Yes.

13          Q.     And then you state that the -- after the  
14    tax amount recovered by a client, a 2 percent  
15    interest rate, which is the 3.42 percent net of  
16    income taxes to a \$1 million underrecovery would  
17    only be \$11,800; is that your testimony?

18          A.     Correct.

19          Q.     Now, you then state at 626 through  
20    629 -- Line 626 through 627 that this amount, the  
21    \$11,800, is less than the amount that would be  
22    achieved by applying a 3.42 percent rate of

1 interest to a \$600,000 net of income tax  
2 reconciliation amount. Do you see that?

3 A. Yes.

4 Q. Would you agree that application of a  
5 3.42 percent rate of interest to a \$600,000 net of  
6 income tax reconciliation amount results in  
7 interest expense of \$20,000?

8 A. Subject to check. I don't have a  
9 calculator with me.

10 Q. Subject to check. Would you also agree  
11 that the interest on the reconciliation would be  
12 deductible for income taxes?

13 A. Yes.

14 Q. And that the net expense after taxes  
15 using your income tax rate of 41 percent that you  
16 apply in your example is \$11,800 subject to check?

17 A. If the -- are you asking me  
18 mathematically what it gives? I don't think that  
19 that's the incremental tax expense. If I can  
20 explain, that would be because the tax effect of  
21 the debt is already accounted for in the interest  
22 synchronization calculation, which already assumes

1     that the debt has been tax effected and is tax  
2     deductible.

3           Q.     Okay. But you do agree that the  
4     interest on the reconciliation balance would be  
5     deductible for income taxes?

6           A.     Interest on debt is deductible for  
7     income tax purposes, and my point is that the  
8     debt -- the tax effect of the debt that's incurred  
9     is already considered in establishing the formula  
10    rate and the formula revenue requirement.

11          Q.     So it's your position that that was  
12    established initially during the formula rate  
13    process?

14          A.     In the true-up proceeding all of the  
15    debt that is outstanding during the year will be --  
16    is considered. All of the actual debt is  
17    considered in the development of the revenue  
18    requirement either in the year for the -- either in  
19    the reconciliation year or in the subsequent years  
20    when those amounts are being collected.

21          Q.     And are you saying that at the time the  
22    rates -- formula rates are set or in the

1 reconciliation calculation?

2 A. In the reconciliation calculation.

3 MS. LUSSON: Okay. Thank you, Ms. Houtsma.

4 MR. JOHNSON: Does AARP still have cross or  
5 did they --

6 MR. COFFMAN: We will waive.

7 MR. JOHNSON: If we could just have a few  
8 minutes then. Thank you.

9 JUDGE SAINSOT: Sure.

10 (Whereupon, a short break was  
11 taken.)

12 FURTHER REDIRECT EXAMINATION

13 BY MR. JOHNSON:

14 Q. I think we are ready to proceed. Just a  
15 few questions on redirect, Ms. Houtsma.

16 During Ms. Lusson's cross-examination  
17 you talked a bit about the regulatory asset that's  
18 created as a result of the recon balance and just a  
19 couple questions along those lines.

20 So is the regulatory asset that you were  
21 discussing, is that recognizing the estimated  
22 future true-up of a cash asset?

1           A.     Yes. The regulatory asset recognizes  
2     that we expect to receive cash in the future, but  
3     the regulatory asset is really an accounting -- the  
4     result of an accounting entry and not the receipt  
5     of cash.

6           MS. LUSSON: I'm sorry. I didn't hear the end  
7     of that. The result of --

8           THE WITNESS: Recording an accounting entry.  
9     It's not the receipt of any cash. It's an  
10    accounting entry that recognizes that we expect to  
11    receive cash in a future period.

12    BY MR. JOHNSON:

13           Q.     Okay. And as a result I guess can that  
14    accounting entry that you just discussed, can that  
15    be used or spent by ComEd to pay the costs of  
16    operating or investing?

17           A.     No. It does not provide any cash that  
18    can be invested in utility assets until it's  
19    received.

20           Q.     Okay. And at what point does it become  
21    cash that ComEd can use?

22           A.     It becomes cash after the reconciliation

1 is filed, approved and implemented through rates.  
2 So generally that's going to be about two years,  
3 two years after the year in question.

4 Q. Okay. And does the accounting treatment  
5 of the regulatory asset affect in any way the need  
6 to receive interest to offset the delay in  
7 receiving the revenues?

8 A. No. The recording of an accounting  
9 entry means that we can recognize the revenue  
10 for -- for accounting purposes and financial  
11 reporting purposes, but because we don't have cash,  
12 the interest is necessary to insure full cost  
13 recovery to compensate us for the time delay in  
14 receiving that cash.

15 MR. JOHNSON: Okay. I have nothing further.

16 JUDGE SAINOT: Ms. Lusson.

17 RECROSS-EXAMINATION

18 BY MS. LUSSON:

19 Q. Just one question. With that regulatory  
20 asset for 2011, however, that amount is added into  
21 retained earnings, which is part of the common  
22 equity capital of the company; would you agree with

1       that?

2             A.       That's correct.

3             MR. JOHNSON:   Nothing further.

4             JUDGE SAINSOT:   I just have one question.   I  
5       just want to make sure I understand your  
6       background, Ms. Houtsma.   Am I right that you are  
7       an accountant?

8             THE WITNESS:    I am.

9             JUDGE SAINSOT:   Okay.   No further questions.  
10       Okay.   You could step down.   Thanks.

11            MR. FEELEY:   At this time we call our next  
12       witness, Theresa Ebrey.

13                               (Whereupon, the witness was duly  
14                               sworn.)

15                               THERESA EBREY,  
16       having been first duly sworn, was examined and  
17       testified as follows:

18                               DIRECT EXAMINATION

19       BY MR. FEELEY:

20            Q.       Can you please state your full name for  
21       the record and spell your last name?

22            A.       Theresa Ebrey, E-B-R-E-Y.

1           Q.     Okay.  And who are you employed by, and  
2     what is your business address?

3           A.     I'm employed by the Illinois Commerce  
4     Commission, 527 East Capitol Avenue, Springfield,  
5     Illinois, 62701.

6           Q.     And what's your position at the Illinois  
7     Commerce Commission?

8           A.     I am an accountant in the accounting  
9     department of the financial analysis division.

10          Q.     Okay.  Ms. Ebrey, did you prepare  
11     written exhibits for submittal in this proceeding?

12          A.     Yes, I did.

13          Q.     And do you have before you two documents  
14     which have been marked for identification as ICC  
15     Staff Exhibit 24.0, which consists of a cover page,  
16     20 pages of narrative text, Attachments A through G  
17     and Schedule 24.1, and it is entitled, Direct  
18     Testimony on Rehearing of Theresa Ebrey, a public  
19     version and confidential version?

20          A.     Yes.

21          MR. FEELEY:  Your Honors, those exhibits were  
22     provided to you in the binders, and as indicated,



1       there is a public and confidential version.

2               JUDGE SAINSOT:   Right.

3       BY MR. FEELEY:

4               Q.       Did you prepare those documents for  
5       presentation in this matter?

6               A.       Yes, I did.

7               Q.       Do you have any corrections, additions,  
8       deletions or modifications to make to ICC Staff  
9       Exhibit 24.0?

10              A.       Yes.   There is just one correction on  
11       Page 4.

12              JUDGE SAINSOT:   Is this the confidential or  
13       the public?   Either one?

14              THE WITNESS:   Both.

15              JUDGE SAINSOT:   Okay.   Sorry.

16              THE WITNESS:   Page 4, Line 49.   At the end of  
17       the line it says that there is no pension asset due  
18       to the Commission's pension.   That should say no  
19       pension asset due to ComEd's pension.

20              MR. FEELEY:   And your Honors, I may -- I wrote  
21       that correction in on the copies that were provided  
22       to you, and it's in both the confidential and

1 public version.

2 JUDGE SAINSOT: Okay. That's good. I just  
3 note that there is no way it could be the  
4 Commission's pension.

5 BY MR. FEELEY:

6 Q. Is the information contained in ICC  
7 Staff Exhibit 24.0 and the attached schedules true  
8 and correct, to the best of your knowledge?

9 A. Yes.

10 Q. If I were to ask you today the same  
11 questions set forth in ICC Staff Exhibit 24.0,  
12 would your answers be the same?

13 A. Yes.

14 MR. FEELEY: Your Honors, at this time I would  
15 move to admit into evidence ICC Staff Exhibit 24.0  
16 with all of its attachments and schedule, and I  
17 note that the documents were filed on e-Docket  
18 July 26th, 2012.

19 JUDGE SAINSOT: Any objection?

20 MR. BERNET: No objection.

21 JUDGE SAINSOT: Okay. That being the case,  
22 ICC Staff Exhibit 24.0 with the attachments to and

1 including 24.1 are entered into evidence.

2 (Whereupon, ICC Staff Exhibit No.  
3 24.0 was admitted into evidence.)

4 MR. FEELEY: Ms. Ebrey is available for  
5 cross-examination.

6 CROSS-EXAMINATION

7 BY MR. BERNET:

8 Q. Good afternoon. My name is Richard  
9 Bernet on behalf of Commonwealth Edison Company.  
10 Good afternoon, Ms. Ebrey.

11 I'm going to ask you some questions  
12 about the -- about the pension, and my questions  
13 are going to be pretty much limited to that. Your  
14 recommendation in this case -- in the original case  
15 was that ComEd doesn't have a pension asset under a  
16 section of the Energy Infrastructure Modernization  
17 Act, or I will call it EIMA, right?

18 A. My position is that the company does not  
19 have a pension asset. I don't know that I would  
20 agree when you say a pension -- they don't have a  
21 pension asset under EIMA.

22 MR. BERNET: May I approach?

1 JUDGE SAINSOT: Yes, you may.

2 MR. BERNET: I am going to hand you what's  
3 been previously marked as ComEd Cross Exhibit 3.

4 JUDGE SAINSOT: You are calling that ComEd  
5 Cross Exhibit --

6 BY MR. BERNET:

7 Q. It's already admitted.

8 And Ms. Ebrey, I have handed you what's  
9 been previously marked as -- or previously admitted  
10 as ComEd Cross Exhibit 3, and that's an excerpt  
11 from the EIMA, isn't it?

12 A. I believe that's correct.

13 Q. And it's 220 ILCS 5/16-108.5(C)(4)(D),  
14 right?

15 A. That's indicated on the sheet you handed  
16 me.

17 Q. Okay. And that provision provides that,  
18 "The performance-based formula rate approved by the  
19 Commission shall do the following: Permit and set  
20 forth protocols subject to a determination of  
21 prudence and reasonableness consistent with  
22 Commission practice and law for the following:

1 Investment return on pension assets net of deferred  
2 tax benefits equal to the utility's long-term debt  
3 cost of capital as of the end of the applicable  
4 calendar year."

5 That's the provision under which ComEd  
6 asserts that it is entitled to that return on its  
7 pension asset, right?

8 A. Right.

9 Q. And it's your testimony both in the  
10 original proceeding and on rehearing, that ComEd  
11 does not have a pension asset, and is therefore not  
12 entitled to any recovery under that section of  
13 EIMA, right?

14 A. Correct.

15 Q. So do you agree with me that the  
16 legislature intended that -- to allow participating  
17 utilities to recover a debt return on their pension  
18 assets under that provision?

19 MR. FEELEY: Objection. It calls for  
20 speculation. He is asking her what she thinks the  
21 legislature intended. She doesn't know what the  
22 legislature intended.

1           MR. BERNET: Well, she is interpreting the  
2     statute, your Honor. I mean --

3           JUDGE SAINSOT: That's really something  
4     that's -- should have been in a brief.

5           MR. BERNET: Okay. I will withdraw that  
6     question.

7     BY MR. BERNET:

8           Q.     Now, you filed direct testimony on  
9     rehearing on July 26th, 2012, right?

10          A.     Right.

11          Q.     And in that testimony you make a new  
12     ratemaking proposal for the first time; isn't that  
13     correct?

14          A.     I make a proposal in this case  
15     consistent with what the Commission has done for  
16     the treatment of recovery related to pension  
17     funding in the past.

18          Q.     All right. That's not what I asked you.  
19     What I asked you was, for the first time in this  
20     case in your testimony on rehearing, that's the  
21     first time you are making this ratemaking proposal,  
22     right, in this case?

1           A.     It's the first time I discuss it in this  
2 case.

3           Q.     Okay. And it's not the provision that  
4 we talked about already by which the Commission  
5 could authorize your ratemaking proposal. There is  
6 another provision of EIMA through which the  
7 Commission could authorize your proposal; isn't  
8 that right?

9           A.     I believe that the EIMA provides for  
10 recovery consistent with prior Commission practice,  
11 and I feel like my proposal provides that.

12          Q.     But it's -- but your proposal -- your  
13 proposal is still within the rubric of EIMA, isn't  
14 it?

15          A.     I believe so.

16          Q.     And it's because there is another  
17 provision in EIMA that the Commission can rely on  
18 to approve your ratemaking proposal, right?

19          A.     I believe so.

20          MR. BERNET: May I approach?

21          JUDGE SAINSOT: Sure.

22

1 (Whereupon, ComEd Rehearing Cross  
2 Exhibit No. 1 was marked for  
3 identification.)

4 BY MR. BERNET:

5 Q. I guess this would be ComEd Rehearing  
6 Cross Exhibit 1.

7 Let me direct your attention to your  
8 testimony, your Lines 259 to 262.

9 A. Yes.

10 Q. And so it's there that you are citing  
11 the other provision of EIMA that authorizes the  
12 Commission to accept your ratemaking proposal,  
13 right?

14 A. Right.

15 Q. And so ComEd Rehearing Cross Exhibit 1  
16 is just a restatement of that provision, but it  
17 just has the phrase at the top. It says that the  
18 performance-based formula rate approved by the  
19 Commission shall do the following, right?

20 A. Yes.

21 Q. Okay. And so in your -- so what you are  
22 suggesting is that your ratemaking proposal must be



1 consistent with Commission practice and law in  
2 order to be approved by the Commission?

3 A. I believe my proposal is consistent  
4 with --

5 Q. I know. That's not what I asked you. I  
6 said your proposal has to be -- in order for your  
7 proposal to be approved by the Commission, it has  
8 to be consistent with Commission practice and law  
9 as is set forth in the statute under this  
10 provision?

11 A. Yes.

12 Q. And so let me direct your attention to  
13 your testimony -- bear with me here one second.

14 And so you testified that your  
15 ratemaking proposal is, in fact, consistent with  
16 Commission practice?

17 A. Yes.

18 Q. And so if for some reason the Commission  
19 concludes that your ratemaking proposal is not  
20 consistent with the Commission practice, then it's  
21 not authorized to approve your proposal, right?

22 A. I don't think I am saying what the

1 Commission can and cannot do.

2 Q. Well, you are recommending to the  
3 Commission that it accept your ratemaking proposal,  
4 aren't you?

5 A. I am making a recommendation, right.

6 Q. And the recommendation is to accept that  
7 proposal?

8 A. Which I believe is consistent. If they  
9 don't accept my recommendation, if they don't  
10 accept what I have offered, that's their  
11 prerogative.

12 Q. I understand that, but if they conclude  
13 that your proposal -- they are going to look at  
14 your proposal, and what you are recommending is  
15 Commission -- my proposal is consistent with  
16 Commission practice?

17 A. Ah-huh.

18 Q. And so if they conclude that your  
19 proposal is not consistent with Commission  
20 practice, then they can't authorize it, right?

21 A. I don't know what they can and cannot  
22 do.

1           Q.     Now, that provision that I handed you,  
2     which I have marked as ComEd Rehearing Cross  
3     Exhibit 1, that language was in the statute when  
4     you originally filed direct testimony in this case  
5     over six months ago, wasn't it?

6           A.     Yes.

7           Q.     We asked you in a data request why you  
8     were making this ratemaking proposal on rehearing  
9     rather than in your direct testimony, and you did  
10    not say that it was based on new facts, did you?

11          A.     Can you refer me to the data request you  
12    are talking about?

13                   (Whereupon, ComEd Rehearing Cross  
14                   Exhibit Nos. 2-3 were marked for  
15                   identification.)

16    BY MR. BERNET:

17          Q.     Sure. I can give it to you. It's two  
18    data requests that I will put together as ComEd  
19    Rehearing Cross Exhibit 2.

20                 Ms. Ebrey, can you read the question  
21    in -- I have handed you now what's been marked as  
22    ComEd Rehearing Cross Exhibit 2, and that's a data

1 request from ComEd Staff No. 14.24. That's  
2 something you prepared; is that right?

3 A. Yes.

4 Q. Can you read the question, please?

5 A. 14.24?

6 Q. 14.24, yes.

7 A. "Please explain each reason why Ms.  
8 Ebrey is making her current ratemaking proposal for  
9 discretionary pension contributions in testimony  
10 submitted on rehearing rather than testimony  
11 submitted prior to the Commission's original  
12 decision."

13 Q. And your response is, "See the response  
14 to ComEd, Staff 14.22"?

15 A. That's correct.

16 Q. And so the second page of that exhibit  
17 is ComEd Staff 14.22, right?

18 A. Right.

19 Q. And that's a response that you also  
20 prepared?

21 A. That's right.

22 Q. And that response doesn't identify any

1 new facts that have come to your attention since  
2 you filed direct testimony in this case; isn't that  
3 true?

4 A. This response says that it considers  
5 arguments that the company posed in its application  
6 for rehearing.

7 Q. Right. Arguments, but no new facts,  
8 right?

9 A. Was that a question?

10 Q. Yes.

11 A. The response doesn't set forth any new  
12 facts other than arguments that the company  
13 proposed.

14 Q. And in ComEd's application for rehearing  
15 ComEd doesn't make any alternative ratemaking  
16 proposal, does it?

17 A. I don't believe so.

18 Q. Your testimony doesn't identify any new  
19 facts that have occurred since January of 2012;  
20 isn't that true?

21 A. Can you tell me what you mean by new  
22 facts?

1           Q.     You don't know what that means? New  
2 facts that came to your attention, not legal  
3 arguments.

4           A.     I think that my testimony sets forth the  
5 proposal, which is something that was not  
6 considered in the first case, and so to the extent  
7 that I -- the adjustment that I presented on my  
8 Exhibit 24.1 is new information that has not  
9 previously been considered by the Commission, and  
10 that was developed in this rehearing phase.

11          Q.     There is nothing that prevented you from  
12 coming up with this ratemaking proposal in the  
13 original case, is there?

14          A.     My focus in the original case was  
15 responding to what ComEd had proposed as recovery  
16 on the pension asset. I didn't consider something  
17 other than that in the original case.

18          Q.     Well, ComEd didn't propose anything  
19 but -- didn't make any other proposal on rehearing  
20 other than that same proposal made in the original  
21 case, right?

22          A.     Part of their reason for the rehearing

1     was to address the customer benefit that was not  
2     being recognized in the Commission decision in the  
3     order that was issued May 29th. Therefore, I was  
4     trying to provide an alternative that would  
5     recognize that customer benefit.

6           Q.     So is it your testimony that at the  
7     original underlying case ComEd didn't take the  
8     position the customers benefited from pension  
9     contributions?

10          A.     I don't know that that was the focus of  
11     the argument.

12          Q.     I didn't ask you if it was the focus  
13     ComEd made in that argument, did I?

14          A.     That may have been part of the argument,  
15     yes.

16          Q.     I would like to direct your attention to  
17     Page 8 of your testimony, specifically Lines 129  
18     through 147. Those are two new arguments that you  
19     are making in support of your position that ComEd  
20     doesn't have a pension asset; isn't that right?

21          A.     Yes.

22          Q.     And the first one relates to the Uniform

1     System of Accounts, which governs how companies  
2     report amounts recorded in their respective FERC  
3     Form 1 reports, and your argument is that it  
4     doesn't define or mention the term "pension asset",  
5     right?

6           A.     Right.

7           Q.     And you reviewed the FERC Form 1 in  
8     connection with your direct testimony in the  
9     underlying case in this case, right?

10          A.     Yes.

11          Q.     Then you also say that the FERC USOA has  
12     no account entitled pension asset, right, that's  
13     another argument you are making?

14          A.     Right.

15          Q.     And the USOA existed when you filed your  
16     direct testimony, didn't it?

17          A.     Yes, it did.

18          Q.     Now, in the connection -- in the  
19     original proceeding you reviewed the direct  
20     testimony of Katie Houtsma?

21          A.     Yes.

22          Q.     And you reviewed the rebuttal testimony



1 and her surrebuttal testimony?

2 A. Yes.

3 Q. The second argument you make on Page 9,  
4 Lines 139 through 147 relates to the fact that --  
5 relates to a document that was used as ComEd Cross  
6 Exhibit 11 in the hearing that took place last  
7 March, right?

8 A. Right.

9 Q. And that cross exhibit was used in your  
10 cross-examination that took place on March 9th?

11 A. Yes.

12 Q. That document was also an exhibit to  
13 Katie Houtsma's rebuttal testimony that was filed  
14 on February 3rd, 2012, right?

15 A. I will accept that. I don't know the  
16 dates.

17 Q. You will accept that subject to check?

18 A. Sure.

19 Q. It's your understanding that ComEd seeks  
20 recovery in this case of a debt return on its  
21 pension asset in the amount of \$1,038,000,000,  
22 right?

1           A.     That's the amount of the pension asset  
2     that the company is asking for a return on,  
3     correct.

4           Q.     And there are two types of contributions  
5     that make up that pension asset, right?

6           A.     Contributions are -- there is two types  
7     of contributions, and it's not the only thing that  
8     makes up the pension asset that ComEd is  
9     requesting, but there are two types of  
10    contributions included.

11          Q.     And those two types of contributions are  
12    mandatory contributions, which are required under  
13    ERISA and other pension laws, right, that's one  
14    type?

15          A.     Right.

16          Q.     And then discretionary contributions,  
17    right?

18          A.     Right.

19          MR. BERNET: May I approach?

20          JUDGE SAINSOT: Yes, you may.

21    BY MR. BERNET:

22          Q.     What I have handed you is a data request

1 from ComEd to staff No. 14.06. Do you recognize  
2 that document?

3 A. Yes, I do.

4 Q. And that's a response that you prepared?

5 A. Yes.

6 Q. And the question is, "Is it Ms. Ebrey's  
7 understanding that the only contributions that make  
8 up the 1.038 billion pension asset were either  
9 discretionary or mandatory?" And can you read your  
10 answer?

11 A. My answer is, "Yes. No other type of  
12 contribution has been indicated by the company as  
13 evidenced in ComEd Cross Exhibit 11, Ebrey."

14 Q. Once ComEd made those mandatory and  
15 discretionary contributions, it's your  
16 understanding that those funds were then commingled  
17 in the pension trust; is that correct?

18 A. That's correct.

19 Q. In fact, all funds are commingled in the  
20 pension trust regardless of the basis for said  
21 contributions, right?

22 A. Right.

1 Q. You are familiar with GAAP?

2 A. Yes.

3 Q. Generally accepted accounting  
4 principles?

5 A. Yes.

6 Q. Principles or procedures?

7 A. Principles.

8 Q. When most of the pension contributions  
9 are made, GAAP doesn't require that mandatory  
10 contributions and discretionary contributions be  
11 segregated for accounting purposes, right?

12 A. Right.

13 Q. Mandatory and discretionary  
14 contributions are not separately identified in  
15 ComEd's publicly reported balance sheet; isn't that  
16 right?

17 A. It's right.

18 Q. The Uniform System of Accounts through  
19 which costs are capitalized and reported from  
20 utilities, FERC Form 1, also doesn't require  
21 separate reporting of mandatory and discretionary  
22 contributions, right?

1           A.     Right.

2           Q.     And with respect to payments to  
3 pensioners, the payments aren't segregated between  
4 mandatory and discretionary; isn't that right?

5           A.     That's right.

6           Q.     And you believe that discretionary  
7 pension contributions have the effect of reducing  
8 pension expense; isn't that right?

9           A.     I think generally all contributions  
10 would serve to reduce pension expense.

11           JUDGE SAINSOT: Could you repeat that, Ms.  
12 Ebrey? I didn't hear it.

13           THE WITNESS: I think generally all  
14 contributions to pension trusts could decrease  
15 pension expense.

16           BY MR. BERNET:

17           Q.     Do you recall that ComEd sent you a data  
18 request asking if it was your opinion that  
19 customers derived a benefit in the form of lower  
20 pension expense resulting from pension  
21 contributions that ComEd is namely required to make  
22 under applicable pension laws; do you recall that?

1           A.     If you can direct me to which DR that  
2     was.   There were a number of them.

3           Q.     You are correct.   There were a number of  
4     them.   Are we on 4?

5           JUDGE SAINSOT:   Yes.   You are.

6                         (Whereupon, ComEd Rehearing Cross  
7                         Exhibit No. 4 was marked for  
8                         identification.)

9     BY MR. BERNET:

10          Q.     I have handed you what's been now marked  
11     as ComEd Rehearing Cross Exhibit 4, and that's a  
12     data request from ComEd to Staff, No. 14.13.   Do  
13     you recognize that document?

14          A.     Yes, I do.

15          Q.     And you prepared that response?

16          A.     I did.

17          Q.     And that's the answer you gave on  
18     August 1st of 2012?

19          A.     Yes, I believe that was the date.

20          Q.     Do you recall that you sent a data  
21     request to ComEd on July 9th on this same subject?

22          A.     No, I don't.   If you could --

1 JUDGE SAINOT: This is 5.

2 (Whereupon, ComEd Rehearing Cross  
3 Exhibit No. 5 was marked for  
4 identification.)

5 BY MR. BERNET:

6 Q. Yes. I'm sorry. I have handed you what  
7 now has been marked as ComEd Rehearing Cross  
8 Exhibit 5. Can you read that question, please?

9 A. "What is the relationship between  
10 pension expense and the normal minimum contribution  
11 level? Please provide a discussion of the similar  
12 factors used in the determination of each and the  
13 main differences in the determination of each."

14 Q. And you received that response on or  
15 about July 16th, 2012?

16 A. Subject to check.

17 Q. Did you consult that response before you  
18 wrote your response to 14.13?

19 A. I don't believe I did.

20 Q. I am going to hand you another response.  
21 It's going to be 6.

22

1 (Whereupon, a discussion was had off  
2 the record.)

3 (Whereupon, ComEd Rehearing Cross  
4 Exhibit No. 6 was marked for  
5 identification.)

6 BY MR. BERNET:

7 Q. I have handed you what's now been marked  
8 as ComEd Cross Exhibit on Rehearing 6. And that's  
9 a data request that ComEd sent to you that you  
10 answered on August 1st. Do you recognize that?

11 A. Yes.

12 Q. And the question is, "Does Ms. Ebrey  
13 agree that pension contributions that ComEd is  
14 required to make under ERISA laws cause ComEd to  
15 incur a cost? If Ms. Ebrey's answer is anything  
16 other than an unqualified, yes, please explain how  
17 ComEd can make such a contribution without  
18 incurring a cost." Can you read the last sentence  
19 of that answer, please?

20 A. "Pension contributions would be a use of  
21 cash, but would not necessarily be classified as a  
22 cost in Ms. Ebrey's opinion."



1           Q.       So when ComEd writes a check to the  
2       pension trust to pay the pension contributions that  
3       it's required to make under law, in your mind that  
4       is not a cost to ComEd?

5           A.       No. I believe the cost is the pension  
6       expense that is incurred.

7           Q.       But so that's not a cost, right?

8           A.       Right.

9           Q.       And if ComEd instead used those same  
10       funds to build a substation, would that be a cost  
11       to ComEd?

12          A.       The fact that they write the check  
13       doesn't make something a cost. It's what happens  
14       with that, what the purpose was behind the writing  
15       of the check.

16          Q.       Right. But if instead of writing that  
17       check ComEd used that money to build a substation,  
18       would it have incurred a cost in that circumstance?

19          A.       Building a substation would be the  
20       incurrence of the cost. Writing the check is not  
21       incurring a cost.

22          Q.       Paying funds is an incurrence of a cost,

1     isn't it?

2           A.     I think, as I said in my response,  
3     that's a use of cash, but I don't know that every  
4     use of cash is incurring a cost.

5           Q.     I'm not asking you about every use of  
6     cash. I am asking you about the use of cash to pay  
7     a mandatory pension contribution. Is that a cost  
8     to the company?

9           A.     I don't believe so.

10          Q.     Do you believe that mandatory pension  
11     contributions are a cost of providing a delivery  
12     service?

13          A.     To the extent that the mandatory pension  
14     contributions are considered in the development of  
15     the pension expense by the actuary, then they are  
16     related to the cost, but I don't believe a  
17     contribution on its own is a cost.

18          MR. BERNET: I will move to strike that. That  
19     wasn't the question I asked. I asked her a very  
20     simple question; whether the cost of a mandatory  
21     pension contribution is considered a cost, a  
22     delivery service cost.

1 JUDGE SAINSOT: And she answered it.

2 Overruled.

3 BY MR. BERNET:

4 Q. Is there a cost associated with the use  
5 of cash as you use that term?

6 MR. FEELEY: I am going to object to the  
7 question. I think it's very vague.

8 BY MR. BERNET:

9 Q. Do you understand the question?

10 A. I'm not sure that I do.

11 JUDGE SAINSOT: Why don't you rephrase it?

12 BY MR. BERNET:

13 Q. Is there a cost -- in your mind when  
14 ComEd uses cash, is there a cost associated with  
15 that?

16 JUDGE SAINSOT: That's still pretty vague.

17 BY MR. BERNET:

18 Q. I will move on.

19 Now, directing your attention to your  
20 testimony at Line 179, and in there, in that  
21 testimony you are talking about ComEd's 2010  
22 discretionary pension contribution, right?

1           A.     Right.

2           Q.     And you say, "In 2010 the discretionary  
3     pension contribution came from ComEd's  
4     internally-generated funds provided by ratepayers,  
5     not investors, and thus, the return calculation  
6     based on a hypothetical debt issuance would not be  
7     appropriate to use here," right? That's what that  
8     says?

9           A.     That's what it says.

10          Q.     And in support of that statement you  
11     cite TEE 3.06, right?

12          A.     Yes.

13          Q.     And that's a data request that you  
14     submitted to ComEd; isn't that correct?

15          A.     Yes.

16                     (Whereupon, ComEd Rehearing Cross  
17                     Exhibit No. 7 was marked for  
18                     identification.)

19     BY MR. BERNET:

20          Q.     And 7, do you recognize that as a data  
21     request you submitted?

22          MR. FEELEY: Hold on just one second. Okay.

1 MR. BERNET: Ready?

2 MR. FEELEY: I'm set.

3 BY MR. BERNET:

4 Q. Do you recognize that as a data request  
5 that you submitted to ComEd on December 2nd of  
6 2011?

7 A. Yes.

8 Q. And you got that answer December 16th,  
9 2011?

10 A. Yes.

11 Q. And that was about three weeks before  
12 you filed your direct testimony in the original  
13 case on January 13th, 2012?

14 A. Or four weeks.

15 Q. So going back to your testimony, you say  
16 that -- you say, "In 2010, the discretionary  
17 pension contribution came from ComEd's  
18 internally-generated funds provided by ratepayers,  
19 not investors, and thus, the return calculation  
20 based on a hypothetical debt issuance would not be  
21 appropriate to use here," right?

22 A. Right.

1           Q.     Can you read the last sentence of that  
2     response?

3           A.     "With the exception of that 2005  
4     contribution, ComEd's pension contributions are  
5     funded with a combination of debt and  
6     internally-generated funds."

7           Q.     So it would be fair -- or your testimony  
8     should have said that the cash for that  
9     contribution came from the combination of debt and  
10    internally-generated funds, right?

11          A.     Correct.

12          Q.     In your direct testimony in the original  
13    proceeding you didn't make the argument that  
14    ComEd's cost recovery for the 2010 contribution  
15    should be limited because that contribution was  
16    made solely with ratepayer funds, did you?

17          A.     I don't know that I specifically  
18    addressed recovery for the 2010 discretionary  
19    contribution in my testimony -- in my direct  
20    testimony.

21          Q.     And you also didn't say any contribution  
22    should be disallowed because they were made with

1 internally-generated funds, right?

2 A. I believe my purpose in the original  
3 case was whether or not the company had the pension  
4 asset. So I did not get into the source of the  
5 contributions.

6 MR. BERNET: Are we on 9?

7 JUDGE SAINSOT: 8. How much more do you have?

8 (Whereupon, ComEd Rehearing Cross  
9 Exhibit No. 8 was marked for  
10 identification.)

11 BY MR. BERNET:

12 Q. Not much. 15 minutes, maybe.

13 I have handed you what's now been marked  
14 as ComEd Rehearing Cross Exhibit No. 8, and that is  
15 a data request that ComEd sent to staff, No. 14.08.  
16 Do you recognize that document?

17 A. Yes.

18 Q. And is that an answer you prepared?

19 A. Yes.

20 Q. And that's a response that you prepared  
21 on August 1st?

22 A. That's when it was provided to the

1     company, I believe.

2           Q.     I would like to direct your attention to  
3     your testimony at Lines 94 to 101 -- I'm sorry --  
4     90 to 101.   Do you see that?

5           A.     I do.

6           Q.     And in there you state that the  
7     Commission at ComEd's request included a statement  
8     in the order that clarified that the recovery the  
9     Commission granted in Docket 05-0597 was not a  
10    return on a pension asset, but rather a return on  
11    the discretionary pension contribution made in  
12    2005, right?

13          A.     That's my testimony, yes.

14          Q.     And then you quote from that order,  
15    correct?

16          A.     Correct.

17          Q.     And where you quote it doesn't say,  
18    "which states in part," does it?

19          A.     Do you mean my quote doesn't say, "which  
20    states in part"?

21          Q.     No.   I mean the language in your  
22    testimony right before the quote doesn't say, this



1 quote -- "my testimony quotes this partially."

2 A. No. It doesn't say that.

3 JUDGE SAINSOT: I don't know what you are  
4 asking her.

5 MR. BERNET: I will get to it. 9?

6 JUDGE SAINSOT: Okay. We are on 9 now.

7 (Whereupon, ComEd Rehearing Cross  
8 Exhibit No. 9 was marked for  
9 identification.)

10 BY MR. BERNET:

11 Q. Yes.

12 So I have handed you what has now been  
13 marked as ComEd Rehearing Cross Exhibit 9. And do  
14 you recognize that document as the Amendatory Order  
15 that you refer to in your testimony?

16 A. Yes.

17 Q. And so when you quoted -- so directing  
18 your attention to the bottom of Page 1, that's  
19 where you start the quote, right, where it says, In  
20 accordance with our order?

21 A. Right.

22 Q. And then it continues on to the next

1 page?

2 A. Right.

3 Q. And when you submitted this testimony  
4 with this quote, you left out the last two lines,  
5 didn't you?

6 A. I included the language I meant to  
7 include.

8 Q. Well, you intended the Commission to  
9 believe this was a complete quote, didn't you, in  
10 your testimony?

11 A. I intended it to be what it -- this is a  
12 quote from the order. I don't know that it --

13 Q. It doesn't say a partial quote?

14 A. It doesn't say a partial quote, right.  
15 I don't know that I have ever --

16 Q. Can you read the last two sentences of  
17 that order?

18 A. The last two sentences of the order?

19 Q. The last two sentences of the paragraph  
20 that we have been discussing, the paragraph where  
21 you started the quote.

22 A. "However, ComEd has appealed the

1 Commission's decision in 05-0597. If the appellate  
2 court sustains ComEd's position, ComEd has  
3 preserved this issue for appeal purposes in this  
4 case."

5 Q. So the reason for the clarification was  
6 ComEd's request to clarify the record for purposes  
7 of appeal, right?

8 MR. FEELEY: Objection. If she can answer the  
9 question.

10 THE WITNESS: Can you repeat the question?

11 BY MR. BERNET:

12 Q. Sure. The reason that ComEd asked for  
13 clarification in the 07-0566 case was to clarify  
14 the record for appeal, right?

15 A. This order says ComEd requested that  
16 language be inserted into the order summarizing the  
17 history of this issue for the appellate court. I  
18 don't know that clarification was mentioned with  
19 the summary.

20 MR. BERNET: I have nothing further.

21 JUDGE SAINSOT: Let's take about a ten-minute  
22 break.

1           MR. FEELEY: Are you going to offer all of  
2 these cross exhibits or just some?

3           JUDGE SAINSOT: Yes. Before we go take a  
4 break, why don't we figure out what your plans are.

5           MR. BERNET: Yes. I am going to offer all of  
6 them.

7           MR. FEELEY: All of them?

8           MR. BERNET: Yes.

9           JUDGE SAINSOT: 1 through 9?

10          MR. BERNET: Yes, please.

11          MR. FEELEY: Can we -- I just needed to know  
12 whether -- what to discuss.

13          JUDGE SAINSOT: Do you want to look at them  
14 further?

15          MR. FEELEY: Yes, we are going to look at  
16 them.

17          JUDGE SAINSOT: So 15 minutes then.

18                       (Whereupon, a short break was  
19 taken.)

20          MR. FEELEY: We have no redirect, but we need  
21 to respond to these cross exhibits.

22          JUDGE SAINSOT: Okay.

1           MR. FEELEY: Do you want to start at the  
2 beginning?

3           JUDGE SAINSOT: Sure.

4           MR. FEELEY: No. 1, no objection. No. 2, no  
5 objection. No. 3, no objection. No. 4, no  
6 objection.

7                   No. 5 we object to. This is the  
8 company's response to a staff data request. It  
9 wasn't attached to her testimony. There is no  
10 proper foundation for this data request to go into  
11 the record, because it's the company's. They could  
12 have put it in their own testimony. They chose not  
13 to.

14           MR. BERNET: Well, the question relates to the  
15 relationship between the pension expense and the  
16 minimum contribution, and Ms. Ebrey testifies about  
17 that. We sent her -- she asked this question. We  
18 sent her the response back on July 16th. She  
19 testifies about that, and we sent her a data  
20 request asking her to clarify her testimony, and  
21 she didn't consult this answer, which is the  
22 company's position with respect to the relationship

1     between normal pension -- normal pension  
2     contributions and pension expense. So I think it  
3     is. It's absolutely relevant.

4           MR. FEELEY: There is no foundation for this.  
5     It's the company's own -- it's the company -- it's  
6     their response. It's not Ms. Ebrey's response, and  
7     it's not something that she attached to her  
8     testimony.

9           JUDGE SAINSOT: Why should she look at this  
10    before she formulates her opinion?

11          MR. BERNET: She is talking about how it  
12    affects ComEd's pension expense.

13          JUDGE SAINSOT: How does this help?

14          MR. BERNET: Well, she asks us this question,  
15    and we provided this answer.

16          JUDGE SAINSOT: We agree with Mr. Feeley. On  
17    top of that, I don't even see a human being on  
18    this. Is there any indication of who responded to  
19    this?

20          MR. BERNET: I believe it was Ms. Houtsma.  
21    Ms. Houtsma responded to it.

22          JUDGE SAINSOT: All right, Ms. Houtsma.

1                   Your objection is sustained.

2           MR. FEELEY:  No. 6, no objection.

3                   No. 7 I just discussed with counsel.

4   There actually was a corrected response to this,  
5   and that corrected response was attached to Ms.  
6   Ebrey's testimony as Attachment D to her direct in  
7   the original case.

8           MR. BERNET:  So we will withdraw it.  We will  
9   withdraw 7.

10          MR. FEELEY:  No. 8, no objection.

11                  No. 9 is the order.  No objection.

12          JUDGE SAINSOT:  Okay.  For the record, we have  
13   nine ComEd cross exhibits on rehearing.  5 is out  
14   on relevancy and other matters, and 7 is withdrawn,  
15   and the rest are -- you are moving, I take it,  
16   to --

17          MR. BERNET:  Yes, I am moving for admission.  
18   So just for clarity, we're moving for admission of  
19   ComEd Cross Exhibit 1, ComEd Cross Exhibit on  
20   Rehearing 2, ComEd Cross Exhibit on Rehearing 3, 4,  
21   6, 8, and 9.

22          JUDGE SAINSOT:  I thought -- right.  You said

1 7 is withdrawn.

2 Okay. Any objection?

3 MR. FEELEY: No objections to those.

4 JUDGE SAINSOT: Okay. Hearing none to that  
5 revised request, your motion is granted.

6 MR. BERNET: Thank you.

7 (Whereupon, ComEd Cross Exhibit on  
8 Rehearing Nos. 1-4, 6, 8, 9 were  
9 admitted into evidence.)

10 MR. FEELEY: And we have no redirect for her.

11 JUDGE SAINSOT: You have no redirect, okay.  
12 Thank you, Ms. Ebrey. You may step down.

13 MR. RIPPPIE: Your Honors, the company's next  
14 witness is Dr. Hemphill. I believe there is no  
15 remaining cross for Mr. Hemphill. However, it  
16 would be so quick to put his testimony on and in  
17 case your Honors had any questions, I would just as  
18 soon call him and move the testimony in, and we  
19 will be done.

20 JUDGE SAINSOT: Okay. So there is no cross  
21 for Dr. Hemphill. Any questions?

22 Okay. So you just need to verify your



1 testimony of Dr. Hemphill, because we don't have  
2 any questions for you either. So you got off easy  
3 this time.

4 MR. HEMPHILL: So what do you want me to do?

5 JUDGE SAINSOT: He will ask you the questions  
6 to verify.

7 (Whereupon, the witness was duly  
8 sworn.)

9 ROSS C. HEMPHILL,  
10 having been first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RIPPKE:

14 Q. Good afternoon, Dr. Hemphill. Can you  
15 please state and spell your last name -- state your  
16 full name and spell your last name for the court  
17 reporter?

18 A. Ross C. Hemphill. Hemphill is spelled,  
19 H-E-M-P-H-I-L-L.

20 Q. I have caused to be placed before you a  
21 copy of the document marked Commonwealth Edison  
22 Company Exhibit 30 together with one attachment

1 designated Commonwealth Edison Company

2 Exhibit 30.1. Do you recognize that document?

3 A. I do.

4 Q. Was that document prepared by you or  
5 under your direction and control for submission to  
6 the Illinois Commerce Commission in this docket of  
7 rehearing as your direct testimony?

8 A. It was.

9 Q. Do you have any additions or corrections  
10 to make to that document today?

11 A. I do not.

12 Q. If I were to ask you the same questions  
13 as appear in Exhibit 30.0 today, would you give me  
14 the same answers?

15 A. I would.

16 Q. I cause to be placed before you a  
17 document that has been marked Commonwealth Edison  
18 Exhibit 34.0. Do you recognize that document?

19 A. I do.

20 Q. Is that document a set of pre-filed  
21 testimony that was prepared by you or under your  
22 direction and control for submission to the

1 Illinois Commerce Commission as your rebuttal  
2 testimony in this docket on rehearing?

3 A. It is.

4 Q. And do you have any additions or  
5 corrections to make to Commonwealth Edison  
6 Exhibit 34?

7 A. I do not.

8 Q. If I were to ask you the same questions  
9 that appear in Commonwealth Edison Exhibit 34  
10 today, would you give me the same answers?

11 A. I would.

12 MR. RIPPIE: Your Honors, Commonwealth Edison  
13 Company would move Exhibits 30.0, 30.1 and 34.0  
14 into evidence.

15 JUDGE SAINSOT: Any objection?

16 Hearing none, your motion is granted,  
17 counsel, and ComEd Exhibits 30.0, 30.1 and 34.0 are  
18 all entered into evidence.

19 (Whereupon, ComEd Exhibit Nos. 30.0,  
20 31.0 and 34.0 were admitted into  
21 evidence.)

22 MR. RIPPIE: I would tender the witness for

1 cross-examination, but understand based on  
2 conversations with all counsel that there is none.

3 JUDGE SAINSOT: Okay, Dr. Hemphill. You can  
4 step down. Thank you.

5 MR. RIPPIE: That concludes the presentation  
6 of the company's witnesses, and I believe it also  
7 concludes the presentation of live witnesses for  
8 any other party.

9 JUDGE SAINSOT: Right. Let's do CUB and then  
10 IIEC and then AG/AARP.

11 MS. SODERNA: Okay. CUB moves for the  
12 admission of CUB Exhibit 5.0, which is the direct  
13 testimony on rehearing of Ralph C. Smith on behalf  
14 of the Citizens Utility Board, as well as  
15 Exhibit -- CUB Exhibit 5.1, which is the data  
16 request response to AG 3.01. And CUB Exhibit 5.2,  
17 which is the affidavit of Ralph C. Smith, and the  
18 testimony exhibits were submitted on e-Docket on  
19 July 26th, 2012.

20 JUDGE SAINSOT: Any objection?

21 MR. RIPPIE: None.

22 JUDGE SAINSOT: Okay. Ms. Soderna, your

1 motion is granted, and CUB Exhibits 5.0, 5.1, 5.2  
2 are all admitted into evidence.

3 (Whereupon, CUB Exhibit Nos. 5.0,  
4 5.1 and 5.2 were admitted into  
5 evidence.)

6 JUDGE SAINSOT: And then you are next?

7 MR. REDDICK: Conrad Reddick for IIEC, the  
8 Illinois Industrial Energy Consumers. Your Honors,  
9 I offer by affidavit the direct testimony and  
10 rebuttals of Mr. Michael P. Gorman. The testimony  
11 has been marked as IIEC Exhibit 3.0 RH, and there  
12 is an attached exhibit, IIEC Exhibit 3.1 RH. Mr.  
13 Gorman's affidavit has been filed on e-Docket on  
14 August 2nd, 2012 as IIEC Exhibit 3.2 RH.

15 JUDGE SAINSOT: Any objection?

16 MR. RIPPIE: None, your Honor.

17 JUDGE SAINSOT: Okay. Hearing none, your  
18 motion is granted, and I take it that RH stands for  
19 rehearing?

20 MR. REDDICK: Yes, your Honor.

21 JUDGE SAINSOT: Just for the record, IIEC  
22 Exhibit 3.0 RH, 3.1 RH and 3.2 RH, which consists

1 of the testimony of Michael P. Gorman, one exhibit,  
2 and his affidavit are all entered into evidence.

3 (Whereupon, IIEC Exhibit Nos. 3.0  
4 RH, 3.1 RH, 3.2 RH were admitted  
5 into evidence.)

6 MS. LUSSON: Okay. Your Honors, the People of  
7 the State of Illinois and AARP offer into evidence  
8 AG/AARP Exhibit 5.0, which is the direct testimony  
9 of Michael L. Brosch, as well as Attachments 5.1,  
10 5.2 and 5.3. We also offer into evidence the  
11 direct testimony of David J. Effron marked as  
12 AG/AARP Exhibit 6.0, and affidavits for each of  
13 these witnesses attesting to those answers under  
14 oath are being filed on e-Docket today.

15 I would note that there is one  
16 correction on Mr. Effron's testimony at Page 6,  
17 Line 135. A schedule -- the sentence references at  
18 Line 135, Schedule F-4. That should read, Schedule  
19 FRA-4.

20 JUDGE SAINSOT: Did you make the change on the  
21 testimony?

22 MS. LUSSON: Yes, we did, your Honor.

1 JUDGE SAINSOT: Okay.

2 MS. LUSSON: And, your Honor, we did not mark  
3 the affidavits as exhibits. Would you prefer that  
4 we did that?

5 JUDGE SAINSOT: Sure. Call them AG/AARP 6.1.

6 MS. LUSSON: And then Mr. Brosch's would be  
7 AG/AARP Exhibit 5.4.

8 JUDGE SAINSOT: Any objection to the admission  
9 of those documents into evidence?

10 MR. RIPPIE: No, your Honor. We also  
11 acknowledge the previous discussions with counsel  
12 about the correction. There is no objection.

13 JUDGE SAINSOT: Okay. Hearing none, your  
14 motion is granted, counsel, and AG/AARP  
15 Exhibit 5.1 -- or 5.0, 5.1, 5.2 and 5.3 and 5.4,  
16 which all concern Mr. Brosch's testimony and  
17 attachments thereto, and the last one is this  
18 affidavit, are admitted into evidence.

19 AG/AARP 6.0 and 6.1, which consists of  
20 Mr. Effron's testimony and his verifying affidavit  
21 are entered into evidence.

22

1                   (Whereupon, AG/AARP Exhibit Nos.  
2                   5.0, 5.1, 5.2, 5.3 and 5.4 and 6.0  
3                   and 6.1 were admitted into  
4                   evidence.)

5           MS. LUSSON: Thank you, your Honor.

6           JUDGE SAINSOT: And you will bring them up  
7           sometime in the future. Okay. You've got them.  
8                   Should we go over the post-trial  
9           schedule so I have confidence that everybody knows  
10          it by heart? Namely me. Okay. When are the  
11          post-trial briefs?

12          MR. RIPPPIE: The initial briefs, your Honor,  
13          is for June 29th set to be due on or before  
14          August 14th of 2012 with replies due the next week  
15          on August 21st.

16          JUDGE SAINSOT: And then we are scheduled to  
17          get something out pretty soon thereafter.

18          MR. RIPPPIE: With BOE's by the 6th of  
19          September.

20          JUDGE SAINSOT: I would just note that if you  
21          are going to make a legal argument, please don't  
22          use a witness's testimony in place of the normal



1 case law that you have. If you are making a  
2 statutory construction argument for that example,  
3 you can't use a witness's testimony in place of  
4 case law about statutory construction. Okay.  
5 Anything else?

6 MR. RIPPIE: No, your Honor.

7 JUDGE SAINSOT: Okay. Have a good day  
8 everybody.

9 MS. LUSSON: Your Honor, just I would ask that  
10 you do not mark the record heard and taken only  
11 because we do have one outstanding data request  
12 response, and we just wanted to have a chance to  
13 review it and to see if we wanted to move it into  
14 the record. Probably not, but I just haven't seen  
15 it yet.

16 MR. RIPPIE: Well, for the record, your Honor,  
17 we will be objecting to the remaining data  
18 requests. We don't want there to be any  
19 misunderstanding about that, on the grounds -- on  
20 multiple grounds, including that there will be no  
21 basis to move them into the record being that there  
22 is no witness to testify to them or to explain

1     them.  There is no ability of any party to respond  
2     to that.

3             JUDGE SAINSOT:  Well, you don't necessarily  
4     need a witness.  It just depends on the document.

5             MR. RIPPIE:  Well, I understand that there  
6     could be a suggestion based on an admission, but I  
7     don't want there to be any surprises.  The  
8     remaining data requests will be objected to.

9             JUDGE SAINSOT:  Yeah.  We haven't seen the  
10    data request, and then as a practical matter I will  
11    keep the record open, but I haven't seen the data  
12    request.  I have no idea what -- or the response.  
13    I have no idea what's on that, so --

14            MS. LUSSON:  And I actually don't  
15    anticipate -- well, I should -- I don't know until  
16    I see it, but if we did want it moved into the  
17    record, we would file a written motion.

18            JUDGE SAINSOT:  You are just doing Murphy's  
19    law right now.  Okay.  Have you good day everybody.

20                                (END OF PROCEEDINGS.)

21

22